

TRANSCRIPT OF RECORD

11194

v. 2437

IN THE

Supreme Court of the United States


October Term, 1946

No.....

ZOA H. ZANE and JACK ZANE, her husband,
Petitioners,
vs.

PACIFIC GREYHOUND LINES, a corporation,
Respondent.

**UPON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**



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No. 11194

United States
Circuit Court of Appeals
For the Ninth Circuit.

PACIFIC GREYHOUND LINES, a Corporation,
Appellant,

vs.

ZOA H. ZANE and JACK ZANE, her husband,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States
for the District of Arizona

Civ. No. 642

ZOA H. ZANE and JACK ZANE, her husband,
Plaintiffs,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

COMPLAINT

The plaintiffs above named complain against the defendant above named, and for their causes of action and statements of claim against the defendant allege as follows:

FIRST CAUSE OF ACTION AND STATE- MENT OF CLAIM

I.

That the plaintiffs, and each of them, are, and at all times hereinafter mentioned were, citizens and residents of the State of Arizona; that the defendant is, and at all times hereinafter mentioned was, a corporation incorporated under the laws of the State of California and a citizen and a resident of the State of California; that the defendant is, and at all times hereinafter mentioned was, duly qualified and authorized to do business in the State of Arizona and doing business in the State of Arizona; that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00);

II.

That the plaintiffs are now, and at all times hereinafter mentioned were, husband and wife; [9]

III.

That on and prior to the 11th day of December, 1942, and ever since said time, the defendant was and has been operating bus lines as a common carrier for the transportation of passengers for hire in and through various states of the United States, including Arizona and California, and on and before said day was operating, and now operates, busses between the cities of Phoenix, Arizona, and Los Angeles, California, and elsewhere in and through said states.

IV.

That on the 10th day of December, 1942, the plaintiff, Zoa H. Zane, at Phoenix, Arizona, purchased from the defendant a ticket for the transportation of said plaintiff by the defendant from Phoenix, Arizona, to Los Angeles, California, and became a passenger for hire on one of defendant's busses; that said bus, in which said plaintiff was such passenger, left Phoenix, Arizona, the evening of December 10th, 1942, and that on the 11th day of December, 1942, while the plaintiff, Zoa H. Zane, was such passenger in said bus in the County of Riverside, State of California, on Highway 99, approximately Sixteen (16) miles west of the city limits of Indio, California, the defendant and the agent, servant and employee of the defendant, one Russell Douglas, who was then and there driving

and operating said bus and acting within the scope of his employment as such agent, servant and employee, so negligently and carelessly drove, managed and operated said passenger bus along and over said Highway aforesaid as to cause the same to collide with a truck then and there being driven in the same direction as said bus, and that by reason of said negligence and carelessness of the defendant, and its said agent, servant and employee, and each of them, and as a direct and proximate result thereof, the plaintiff, Zoa H. Zane, sustained the injuries hereinafter set forth; [10]

V.

That as a result of said carelessness and negligence the right foot and lower portion of the right leg of the plaintiff, Zoa H. Zane, were so badly bruised, smashed, injured and damaged as to necessitate the amputation of the right leg of said plaintiff below the knee; that the neck of the right femur or thigh bone of said plaintiff was fractured which resulted in a non-union of the broken parts of said femur or thigh bone, and in a non-union of said femur or thigh bone with the hip bone; that, as a result of said fracture and non-union, there is and will permanently continue to be a total non-functioning right-lower extremity of said plaintiff so far as weight bearing is concerned, and said plaintiff has been and will continue to be caused great discomfort, pain, suffering, inconvenience, and disfigurement, and will be forced at all times to use crutches, and will be wholly unable at any

time to use an artificial limb, or to walk or use her right leg.

VI.

That by reason of said fracture of said right femur or thigh bone, plaintiffs have been obliged to incur and pay and have incurred and paid expenses as follows: Doctors' bills, \$200; Hospital bills, \$185; Medical expenses, \$300; Assistance at home of plaintiffs, \$720; and X-rays, \$160, or a total of \$1,565.00; and that the plaintiffs will be required to incur and pay further expenses for medical care and treatment;

VII.

That as a result of said fracture of said right femur and the said resulting non-unions, hereinbefore set forth, which were directly and proximately caused by said carelessness and negligence of the defendant, and of its said agent, servant and employee, the plaintiff, Zoa H. Zane, has suffered and will continue to suffer great pain, anguish, distress, discomfort, [11] inconvenience and disfigurement, and that said plaintiff has been, is, and will be unable to support her weight, or to use an artificial limb, or to walk without the use of crutches, and has been, is, and will be unable to perform duties as a housewife, or to engage in any gainful pursuit, or to take care of her children or to bear children, or to be a normal wife; that at the time of said accident, said plaintiff, Zoa H. Zane, was 23 years of age and was in excellent health, and had a long life expectancy; that at said time said plain-

tiff was capable of earning approximately \$150 per month; and that, had it not been for said injury to said right femur, and the results and consequences thereof, said plaintiff could and would have earned from \$150 to \$200 per month; that by reason of said injury to said right femur, the plaintiffs, in addition to the special damages above set forth, have suffered and sustained general damages in the sum of \$50,000.

Wherefore, plaintiffs pray that the plaintiffs have and recover of and from the defendant the sum of \$51,565, together with their costs herein incurred.

SECOND CAUSE OF ACTION AND STATEMENT OF CLAIM

I.

Plaintiffs here repeat, reiterate and adopt by reference, each and every, all and singular, the allegations contained in paragraphs numbered I, II, III, IV, and V of the foregoing first cause of action and statement of claim as a part of this second cause of action and statement of claim, the same as though said allegations were here set forth in full.

II.

That immediately after the occurrence of the accident and injuries to the plaintiff, Zoa H. Zane, above set forth, she was taken to a hospital at Indio, California, where her right leg was amputated below the knee; that very shortly thereafter the claim

agent of the defendant called upon said plaintiff at said hospital and then and thereafter at other times advised said plaintiff that the Doctor who had amputated said leg of plaintiff, and who was in attendance upon said plaintiff, was the defendant's Doctor, and that the defendant would pay said Doctor for his services to said plaintiff, and would take care of all hospital and other medical bills, at said hospital, which was done by the defendant; that said claim agent of the defendant further advised said plaintiff that said Doctor was a good and capable Doctor, and that said plaintiff could depend and rely upon what said Doctor might tell her in regard to her injuries and condition; that said Doctor was in daily attendance upon said plaintiff at said hospital, and that said claim agent visited said plaintiff at said hospital very frequently, and at all times assured the plaintiff as to the high degree of medical skill of said Doctor, and many times advised the plaintiff and caused the plaintiff to believe that she safely could rely upon the statements of said Doctor as to her injuries and condition; that at all said times and up to and at the time of the settlement hereinafter mentioned said claim agent, and said Doctor in treating and attending said plaintiff, were the agents of, and acting for, defendant.

III.

That at all times while said plaintiff, Zoa H. Zane, was in said hospital she was in a very weak, nervous and worried condition as the result of said injuries and said amputation, and that said claim

agent and said Doctor gained the confidence of said plaintiff, and that the plaintiff relied upon and believed [13] the statements of said claim agent and said Doctor; that said claim agent and said Doctor on many occasions at said hospital falsely stated and represented to said plaintiff that her only injury was the injury to the right foot and lower right leg of said plaintiff, which necessitated the amputation of the leg of said plaintiff below the knee, and further falsely represented and stated to said plaintiff that she had not sustained any other injuries in, or by reason of, said accident, and that the plaintiff would be able to use an artificial limb on said right leg, thus avoiding the use of crutches, and that said plaintiff would be able to walk without crutches, and that in due course said plaintiff would be able to use said artificial limb and could walk, dance, and engage in all other activities to practically the same extent as though she still had her natural leg and foot, and that the plaintiff would have or experience very little, if any, pain, discomfort or inconvenience; that said plaintiff, having explicit confidence in said Doctor and said claim agent, believed said statements and representations to be true, and relied entirely thereon; that all of said representations and statements were wholly false and untrue, and either were made by said Doctor and said claim agent, who then and there were the agents of the defendant, knowing the same to be false and untrue, or were made recklessly and without regard as to their truth or falsity, and with a full means of knowledge of their

falsity; that, as alleged in paragraphs V and VII of the foregoing first cause of action and statement of claim, which allegations are here adopted by reference, in addition to the injury to her right foot and lower right leg below the knee, which necessitated the said amputation, said plaintiff, Zoa H. Zane, in and as a result of said accident sustained a fracture of the neck of her right femur or thigh bone, with the results alleged in said paragraphs, which allegations are hereby adopted [14] by reference.

IV.

That several weeks after said accident, said claim agent of the defendant took up with the plaintiff, Zoa H. Zane, at said hospital the matter of a settlement of her claim against the defendant by reason of said accident and the injuries to the right foot and lower right leg of the plaintiff below the knee, which necessitated the said amputation, and that at said time and thereafter said claim agent and said Doctor on many occasions importuned and urged said plaintiff to agree upon a settlement of said claim; that thereafter said plaintiff, Zoa H. Zane, and the plaintiff, Jack Zane, agreed with the defendant, through its said claim agent, upon a settlement of said claim for said injuries below the knee, at and for the sum of \$14,500, which said sum was paid to the plaintiffs by the defendant; and that the defendant, through its said claim agent, took and received from the plaintiffs a general release purporting to release and discharge the de-

defendant from any and all claims and demands of the plaintiffs on account of said accident.

V.

That at the time of the execution of said release, and many times prior thereto, said Doctor and claim agent of the defendant made the false representations and statements to the plaintiffs regarding the injuries and condition of the plaintiff, Zoa H. Zane, that are above set forth, and positively represented and stated to the plaintiffs that no injuries had been sustained by the plaintiff except said injuries to her lower right leg and foot as above described; that immediately prior to said settlement said claim agent and said Doctor advised the plaintiffs that they did not need any independent, legal or other advice, and that a better settlement could be made without the same; [15] that neither at the time of said settlement and the execution and delivery of said release, nor at any time prior thereto, nor for a long time subsequent thereto, did the plaintiffs, or either of them, have any knowledge whatsoever of, or suspect the existence of, said fracture of the femur or thigh bone of the plaintiff, Zoa H. Zane, or of any injury whatsoever thereto, or of any of the consequences thereof; and that said release was executed and delivered in complete ignorance of the plaintiffs, and each of them, of such injury and in complete reliance upon the representations and statements aforesaid regarding the injury sustained by the plaintiff, and the results thereof; that neither the said fracture of said right femur or thigh bone, nor the results

or consequences thereof, became known to the plaintiffs until long after said settlement and the execution and delivery of said release; that if said fracture or the results or consequences thereof had been known to the plaintiffs, or either of them, this would have materially affected their said settlement with the defendant, and that the plaintiffs, for said amount, would not have executed a release purporting to cover and extend to any and all claims of the plaintiffs, if said fracture, or the results or consequences thereof, had been known or suspected by them; that at the time of the execution of the said release, both the plaintiffs were ignorant of their legal rights and were wholly inexperienced as to legal instruments or affairs, and that the plaintiff, Zoa H. Zane, was in a weak and nervous condition; that by reason of this and by reason of the false representations and statements of the agents of the defendant aforesaid, the plaintiffs were led to believe, and did believe, that said release did not apply or extend to anything except the injury to said right foot and lower right leg of said plaintiff, and the amputation thereof, which they had been assured was the only injury sustained in or caused by said [16] accident as aforesaid, and that the claim of the plaintiffs by reason of said injury was the only claim that was being discharged or released by said release.

VI.

That prior to and at the time of said accident, and ever since said time it was and has been and now is provided in and by the statutes of the State

of California, Section 1542 of the Civil Code of California, as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

That in and by the decisions of the Supreme Court of the State of California, being the court of last resort of said State, construing said section, it has been and is decided and held that a release executed by one who has sustained injuries does not extend to or cover the injuries not known or suspected to exist at the time of such release, but extends to and covers only such injuries as were known or suspected to exist at such time and stands as the agreement of the parties as to such known injuries only; that in and by the decisions of said Court it has been and is decided and held that where, at the time of the execution of such release, there are known and unknown injuries no rescission of such release and no offer to restore or restoration of the consideration paid therefor is necessary in order to recover on account of injuries not known or suspected to exist at the time of the execution of such release.

VII.

That the plaintiffs have not been and are not able to tender or repay the consideration which the plaintiffs received from the defendant in the settlement of said injuries known to them [17] at the

time of said settlement for the reason that the plaintiffs did not learn or know that there had been any injuries to the femur or thigh bone of said plaintiff, Zoa H. Zane, until long after said settlement was made; that this condition was brought about by the defendant, its agents and servants, in falsely representing to the plaintiffs that there were no injuries other than the injuries to the right foot and the right leg below the knee; that, by reason of the conduct of the defendant, its agents and servants, in making said representations as herein alleged, the plaintiffs have been and are unable to tender or repay to the defendant the consideration received in settlement of the injuries known at the time said settlement was made; that the plaintiffs were compelled to spend a large portion of the money received from said settlement for medical, hospital, X-rays, nursing, and other expenses in trying to heal or cure said injury of said fractured femur, and had spent other portions of said money in other ways before learning of said injury; that said condition of plaintiffs being unable to tender or repay the defendant the sum of money received in said settlement was and has been due to the said conduct of the defendants, its agents and servants, as herein alleged.

VIII.

That by reason of said fracture of said right femur or thigh bone plaintiffs have been obliged to incur and pay and have incurred and paid expenses as follows: Doctors' bills, \$200; Hospital bills, \$185; Medical expenses, \$300; Assistance at home of plain-

tiffs, \$720; and X-rays, \$160, or a total of \$1,565; and that the plaintiffs will be required to incur and pay further expenses for medical care and treatment;

IX.

That as a result of said fracture of said right femur and the resulting non-unions, hereinbefore set forth, which the [18] plaintiffs did not know or suspect to exist at the time of the execution and delivery of said release, and which was a direct and proximate result of the said carelessness and negligence of the defendant and of its said agent, servant and employee, the plaintiff, Zoa H. Zane, has suffered, and will continue to suffer, great pain, anguish, distress, discomfort, inconvenience and disfigurement, and has been, is, and will be unable to support her weight, or to use an artificial limb, or to walk without the use of crutches, and has been, is, and will be unable to perform duties as a housewife, or to engage in any gainful pursuit, or to take care of her children, or to bear children, or to be a normal wife; that at the time of said accident, said plaintiff, Zoa H. Zane, was 23 years of age and was in excellent health, and had a long life expectancy; that at said time said plaintiff was capable of earning approximately \$150 per month; and that, had it not been for said injury to said right femur, said plaintiff could and would have earned from \$150 to \$200 per month; that, by reason of said injury to said right femur and the said non-unions resulting therefrom, the plaintiffs, in addition to the special damages above set forth, have suf-

ferred and sustained general damages in the sum of \$50,000.

Wherefore, plaintiffs pray that the plaintiffs have and recover of and from the defendant the sum of \$51,565, together with their costs herein incurred.

THIRD CAUSE OF ACTION AND STATE- MENT OF CLAIM

I.

Plaintiffs here repeat, reiterate, and adopt by reference, each and every, all and singular, the allegations contained in paragraphs numbered I, II, III, IV, and V of the foregoing [19] first cause of action and statement of claim as a part of this third cause of action and statement of claim, the same as though said allegation were here set forth in full.

I.

That immediately after the occurrence of said accident and injuries to said plaintiff, Zoa H. Zane, above set forth, said plaintiff was taken to a hospital at Indio, California where her right leg was amputated below the knee; that very shortly thereafter the claim agent of the defendant called upon said plaintiff at said hospital, and that thereafter said claim agent of the defendant took up with the plaintiff, Zoa H. Zane, the matter of a settlement of the claim of the plaintiffs against the defendant by reason of said accident; that a settlement was thereafter agreed upon between the defendant, acting through said claim agent, and the plaintiffs un-

der which the defendant paid to the plaintiffs the sum of \$14,500, and took and received a general release from the plaintiffs purporting to release and discharge the defendant from any and all claims and demands of the plaintiffs on account of said accident.

III.

That neither at the time of said settlement and the execution and delivery of said release, nor at any time prior thereto, nor for a long time subsequent thereto, did the plaintiffs, or either of them, have any knowledge whatsoever of, or suspect the existence of, said fracture of the femur or thigh bone of said plaintiff, Zoa H. Zane, or of any injury whatsoever thereto, or of any of the consequences thereof, and that said release was executed and delivered in complete ignorance of the plaintiffs, and each of them, of any such injury; that at and prior to the time of the execution and delivery of said release, the said claim agent of the defendant and the Doctor in charge and in care of the plaintiff, Zoa H. Zane, at said hospital, stated [20] and represented to the said plaintiffs that her only injury was the injury to the right foot and lower right leg of said plaintiff, which necessitated the amputation of said leg of said plaintiff below the knee, and that said plaintiff had sustained no other injury whatsoever in or as a result of said accident, and that in due course after said accident, said plaintiff would be able to use an artificial limb on said right leg, thus avoiding the use of crutches, and that said plaintiff would be able to walk and

engage in all other activities to practically the same extent as though she still had her natural leg and foot, and that the plaintiff would have and experience very little, if any, pain, discomfort or inconvenience; that either the said fracture of and injury to the femur or thigh bone of said plaintiff was unknown to the defendant, and its said agents, or that the defendant and said agents concealed the same from the plaintiffs, and led the plaintiffs to believe that the only injury was the said injury to the right foot and lower right leg of said plaintiff, Zoa H. Zane; that said fracture of said right femur or thigh bone, and the results and consequences thereof, became known to the plaintiffs long after said settlement and the execution and delivery of said release; that if said fracture, or the results and consequences thereof, had been known to the plaintiffs, or either of them, this would have materially affected their said settlement with the defendant, and that the plaintiffs would not for said amount have executed a release purporting to cover and extend to any and all claims of the plaintiff if said fracture, or the results or consequences thereof, had been known or suspected by them.

IV.

That prior to and at the time of said accident, and ever since said time, it was and has been and now is provided in and by the statutes of the State of California, Section 1542 of the [21] Civil Code of California, as follows:

“A general release does not extend to claims

which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

That in and by the decisions of the Supreme Court of the State of California, being the court of last resort of said State, construing said section, it has been and is decided and held that a release executed by one who has sustained injuries does not extend to or cover injuries not known or suspected to exist at the time of such release, but extends to and covers only such injuries as were known or suspected to exist at such time and stands as the agreement of the parties as to such known injuries only; that in and by the decisions of said Court it has been and is decided and held that where, at the time of the execution of such release, there are known and unknown injuries, no recision of such release and no offer to restore or restoration of the consideration paid therefor is necessary in order to recover on account of injuries not known or suspected to exist at the time of the execution of such release.

V.

That the plaintiffs have not been and are not able to tender or repay the consideration which the plaintiffs received from the defendant in the settlement of the injuries known to them at the time of said settlement, for the reason that plaintiffs did not learn or know that there had been any injury to the femur or thigh bone of said plaintiff, Zoa

H. Zane, until long after said settlement was made, and that the plaintiffs were compelled to spend a large portion of the money received from said settlement for medical, hospital, X-rays, nursing and other expenses in trying to heal or cure said injury of said [22] fractured femur, and had spent other portions of said money in other ways before learning of said injury.

VI.

That by reason of said fracture of said right femur or thigh bone, plaintiffs have been obliged to incur and pay and have incurred and are paid expenses as follows: Doctors' bills, \$200; Hospital bills, \$185; Medical expenses, \$300; Assistance at home of plaintiffs, \$720; and X-rays, \$160, or a total of \$1,565; and that the plaintiffs will be required to incur and pay further expenses for medical care and treatment;

VII.

That as a result of said fracture of said right femur and the resulting non-unions hereinbefore set forth, which the plaintiffs did not know or suspect to exist at the time of the execution and delivery of said release, and which was a direct and proximate result of the said carelessness and negligence of the defendant and of its said agent, servant and employee, the plaintiff, Zoa H. Zane, has suffered, and will continue to suffer, great pain, anguish, distress and discomfort, inconvenience and disfigurement, and has been, is, and will be unable to support her weight, or to use an artificial limb, or to

walk without the use of crutches, and has been, is, and will be unable to perform duties as a housewife, or to engage in any gainful pursuit, or to take care of her children, or to bear children, or to be a normal wife; that at the time of said accident, said plaintiff, Zoa H. Zane, was 23 years of age and was in excellent health, and had a long life expectancy; that at said time said plaintiff was capable of earning approximately \$150 per month; and that, had it not been for said injury to said right femur, said plaintiff could and would have earned from \$150 to \$200 per month; that, by reason of said injury to said right femur and the said non-unions resulting therefrom, [23] the plaintiffs, in addition to the special damages above set forth, have suffered and sustained general damages in the sum of \$50,000.

Wherefore, plaintiffs pray that the plaintiffs have and recover of and from the defendant the sum of \$51,565.00, together with their costs herein incurred.

TERRENCE A. CARSON.
STAHL & MURPHY.

By FLOYD M. STAHL.
JOHN A. MURPHY,
Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 9, 1944. [24]

[Title of District Court and Cause.]

ANSWER

ANSWER TO FIRST CAUSE OF ACTION

Comes Now the defendant and answering the First Cause of Action set forth in the plaintiff's complaint filed herein, admits, denies and alleges as follows:

FOR A FIRST DEFENSE

I.

Answering Paragraph I of said First Cause of Action, Defendant admits all averments therein contained.

II.

Answering Paragraph II of said First Cause of Action, defendant admits all averments therein contained.

III.

Answering Paragraph III of said First Cause of Action, defendant admits all averments therein contained.

IV.

Answering Paragraph IV of said First Cause of Action, defendant admits that on or about the 10th day of December, 1942, the plaintiff, Zoa H. Zane of Phoenix, Arizona, purchased from the defendant a ticket for the transportation of said plaintiff by defendant from Phoenix, Arizona, to Los Angeles, California, and became a passenger for hire on one of defendant's busses. Defendant

denies generally and specifically each and every [25] allegation in said Paragraph IV contained save and except the allegations hereinbefore expressly admitted.

V.

Answering Paragraph V of said First Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

VI.

Answering Paragraph VI of said First Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

VII.

Answering Paragraph VII of said First Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

FOR A SECOND DEFENSE

Not admitting any of the allegations of the complaint hereinbefore denied, but for a separate and distinct defense to said First Cause of Action, defendant alleges:

That if there was an accident and plaintiffs, or one of them, was injured and damaged as alleged in said First Cause of Action, that on or about the 19th day of February, 1943, for a valuable and adequate consideration, to-wit, the sum of \$15,967.00 lawful money of the United States, in hand paid to the said plaintiffs and then and there received and accepted by the said plaintiffs, the said plaintiffs,

and each of them, did fully release and discharge the said defendant of and from all claims, demands, injuries, damages, matters and things set forth in said First Cause of Action, which said release and discharge was in writing and in words and figures as follows:

“RELEASE IN FULL

Received of Pacific Greyhound Lines the sum of Fifteen thousand nine hundred, Sixty-seven and no/100 Dollars (\$15,967.00), in consideration of [26] which sum we hereby release and discharge Pacific Greyhound Lines of and from any and all claims and demands which we now have or may hereafter have, on account of or arising out of an accident which occurred on or about the 11 day of December, 1942, at Point on U. S. Highway # 99 near Indio, California resulting in personal injury and property damage.

It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.

It is further understood and agreed that the payment of said sum is not, and is not to be construed as, an admission on the part of said payors of any liability whatsoever in consequence of said accident.

Dated at Indio, California, this 19 day of February, 1943.

ZOA ZANE (L.S.)

JACK ZANE (L.S.)

M. D. CAMERON,

Witness.

ALPHA R. MARCUM,

Witness.

This release should not be signed unless read by or read to the person signing same.”

ANSWER TO SECOND CAUSE OF ACTION

Comes Now the defendant and answering the Second Cause of Action of the complaint on file herein admits, denies and alleges as follows:

FOR A FIRST DEFENSE

I.

Answering Paragraph I of said Second Cause of Action, defendant refers to the answers of defendant to paragraphs numbered I, II, III, IV and V of the First Cause of Action, and repeats, reiterates and adopts by reference the answers to said paragraphs of said First Cause of Action as the answer to Paragraph I of this, the Second Cause of Action.

II.

Answering Paragraph II of said Second Cause of Action, defendant admits that after the accident

described in said Second Cause of Action the plaintiff, Zoa H. Zane was taken to a hospital at Indio, California, and her right leg was [27] amputated below the knee. Defendant denies, generally and specifically, each and every allegation in said Paragraph II of said Second Cause of Action contained save and except the allegations hereinbefore expressly admitted.

III.

Answering Paragraph III of said Second Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

IV.

Answering Paragraph IV of said Second Cause of Action of said complaint, defendant admits that for a valuable consideration the plaintiffs executed and delivered to the defendant a full release and discharge, releasing and discharging the defendant from any and all claims and demands of the plaintiffs on account of the accident described in the said Second Cause of Action. Defendant denies that said release and discharge was merely a general release but alleges in such behalf that said release was specific and detailed. Defendant denies generally and specifically each and every allegation in said Paragraph IV of said Second Cause of Action contained, save and except the allegations of said paragraph hereinbefore expressly admitted.

V.

Answering Paragraph V of said Second Cause

of Action, defendant denies, generally and specifically, each and every allegation therein contained.

VI.

Answering Paragraph VI of said Second Cause of Action, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averment to the effect that there is and was a statute of the State of California known as Section 1542 of the Civil Code of California [28] reading as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Defendant denies generally and specifically each and every allegation in said paragraph VI of said Second Cause of Action contained save and except the allegations of said paragraph hereinbefore expressly admitted.

VII.

Answering Paragraph VII of said Second Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

VIII.

Answering Paragraph VIII of said Second Cause of Action defendant denies generally and specifically each and every allegation therein contained.

IX.

Answering Paragraph IX of said Second Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

FOR A SECOND DEFENSE

Now Comes the defendant, and not admitting any of the allegations of the complaint hereinbefore denied, but for a separate and distinct defense to said Second Cause of Action, refers to, reiterates and restates and adopts by reference all of the allegations and averments contained in the Second Defense to the First Cause of Action of the Complaint, as a second defense to this, the Second Cause of Action.

ANSWER TO THIRD CAUSE OF ACTION

Comes Now the defendant and answering the Third Cause of Action of the Complaint on file herein, admits, denies and [29] alleges as follows:

FOR A FIRST DEFENSE

I.

Answering Paragraph I of said Third Cause of Action, defendant refers to the answers to paragraphs numbered I, II, III, IV and V of the First Cause of Action, and repeats, reiterates and adopts by reference the answers to said paragraphs of said First Cause of Action as the answer to Paragraph I of this, the Third Cause of Action.

II.

Answering paragraph II of said Third Cause of Action, defendant admits that after the occurrence of the accident set forth in said Third Cause of Action, the plaintiff, Zoa H. Zane, was taken to a hospital at Indio, California, and her right leg was amputated below the knee, and admits that thereafter for a valuable consideration, the plaintiffs executed and delivered to the defendant a full release and discharge, releasing and discharging the defendant from any and all claims and demands of the plaintiffs on account of the accident described in the said Third Cause of Action. Defendant denies that said release was merely a general release but alleges that said release was specific and detailed. Defendant denies, generally and specifically, each and every allegation in said Paragraph II of said Third Cause of Action contained, save and except the allegations of said paragraph hereinbefore expressly admitted.

III.

Answering Paragraph III of said Third Cause of Action, defendant denies generally and specifically each and every allegation in said paragraph contained.

IV.

Answering Paragraph IV of said Third Cause of Action, defendant alleges that it is without knowledge or information [30] sufficient to form a belief as to the truth of the averment to the effect that there is and was a statute of the State of Califor-

nia known as Section 1542 of the Civil Code of California reading as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Defendant denies generally and specifically each and every allegation in said paragraph IV of said Third Cause of Action contained, save and except the allegations of said paragraph hereinbefore expressly admitted.

V.

Answering Paragraph V of said Third Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

VI.

Answering Paragraph VI of said Third Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

VII.

Answering Paragraph VII of said Third Cause of Action, defendant denies generally and specifically each and every allegation therein contained.

FOR A SECOND DEFENSE

Now Comes the defendant, and not admitting any of the allegations of the complaint hereinbefore

denied, but for a separate and distinct defense to said Third Cause of Action, defendant refers to, reiterates and restates and adopts by reference all of the allegations and averments contained in the Second Defense to the First Cause of Action of the complaint as a second defense to this, the Third Cause of Action. [31]

Wherefore, defendant prays that plaintiffs take nothing by their complaint and that defendant recover its costs in this case expended or incurred.

BAKER & WHITNEY.

By ALEXANDER B. BAKER,
Attorneys for Defendant.

Receipt of Copy Acknowledged this 20th day
of January, 1945.

TERRENCE A. CARSON.
STAHL & MURPHY.

By TERRENCE A. CARSON,
Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 20, 1945. [32]

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Thursday, May 17, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

This case comes on regularly this day for trial.

Terrence Carson, Esquire, and Floyd Stahl, Esquire, are present on behalf of the plaintiffs and Alexander B. Baker, Esquire, and Harold Whitney, Esquire, are present on behalf of the defendant.

Both sides announce ready for trial.

A lawful jury of twelve men is now duly empaneled and sworn to try this case.

Thereupon, It Is Ordered that all Jurors not empaneled in the trial of this case be excused to the further order of this Court.

Floyd Stahl, Esquire, now reads the plaintiffs' complaint to the Jury.

Alexander B. Baker, Esquire, now reads the defendant's answer to the Jury.

Terrence Carson, Esquire, makes the plaintiffs' opening statement to the Jury.

Alexander B. Baker, Esquire, reserves the defendant's statement until the close of the plaintiffs' case.

Plaintiffs' Case:

Zoa H. Zane is now sworn and examined on behalf of the plaintiffs.

Thereupon, at the hour of twelve o'clock noon, It Is Ordered that the further trial of this case be continued to the hour of two o'clock p.m., this date, to which time the Jury, being first duly admonished by the Court, the parties and counsel are excused.

Subsequently, at the hour of two o'clock p.m., the Jury and all members thereof, the parties and counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Zoa H. Zane is now recalled and further examined for the plaintiffs.

Plaintiffs' Exhibit One, receipt, is now admitted in evidence.

Plaintiffs' Exhibit Two, cancelled check, is now admitted in evidence.

Defendant's Exhibit A, telegram, is now admitted in evidence.

Defendant's Exhibit B, release, is now admitted in evidence.

Defendant's Exhibit C, Voucher, is now admitted in evidence. [35]

Defendant's Exhibit D, voucher, is now admitted in evidence.

Dr. J. Lytton-Smith is now sworn and examined on behalf of the plaintiffs.

Plaintiff's Exhibit Three, X-ray, is now admitted in evidence.

Plaintiff's Exhibit Four, X-ray, is now admitted in evidence.

Zoa H. Zane is now recalled and further examined on behalf of the plaintiffs.

Defendant's Exhibit E, release form, is now admitted in evidence.

Plaintiffs' Exhibit Five, Bill, is now admitted in evidence.

Plaintiffs' Exhibit Six, Bill, is now admitted in evidence.

And thereupon, at the hour of 4:40 o'clock p.m., It Is Ordered that the further trial of this case be continued to the hour of ten o'clock a.m., Friday, May 18, 1945, to which time the Jury, being first duly admonished by the Court, the parties and their respective counsel are excused.

.

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Friday, May 18, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

The Jury and all members thereof, the parties
and counsel being present pursuant to recess, fur-
ther proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Zoa H. Zane is now recalled and further exam-
ined on behalf of the plaintiffs.

Jack Zane is now sworn and examined on behalf
of the plaintiffs.

Dr. Lytton-Smith is now recalled and further
examined on behalf of the plaintiffs.

Plaintiffs' Exhibit Eight, X-ray, is now admitted
in evidence.

Plaintiffs' Exhibit Nine, X-ray, is now admit-
ted in evidence.

Plaintiffs' Exhibit Ten, X-ray, is now admitted
in evidence.

Plaintiff's Exhibit Eleven, X-ray, is now admit-
ted in evidence. [36]

Jack Zane, heretofore sworn, is now recalled and
further examined on behalf of plaintiffs.

And thereupon, at the hour of twelve o'clock noon, It Is Ordered that the further trial of this case be continued to the hour of two o'clock p.m., this date, to which time the Jury, being first duly admonished by the Court, the parties and their counsel are excused.

Subsequently, at the hour of two o'clock p.m., the Jury and all members thereof, the parties and their counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Jack Zane is now recalled and further examined for the plaintiffs.

Charles B. Palmer is now sworn and examined on behalf of the plaintiffs.

Zoa H. Zane is now recalled and further examined on behalf of the plaintiffs.

The defendant's Exhibits K, L, N, O, P, T, S, R, U, V, W, X, Y, and Z, checks, are now admitted in evidence.

The defendant's Exhibits AB and AC, checks, are now admitted in evidence.

The defendant's Exhibit AD, bank statements, are now admitted in evidence.

Plaintiffs' Exhibit Twelve, receipt, is now admitted in evidence.

Whereupon, the plaintiffs rest.

The Jury is now duly admonished by the Court and excused to Saturday, May 19, 1945, at the hour of ten o'clock a.m.

The defendant now moves the Court to instruct the Jury to return a verdict for the defendant upon the ground and for the reason that the plaintiffs have failed to adduce testimony sufficient to constitute a cause of action against the defendant. Said motion is now duly argued by respective counsel.

And thereupon, at the hour of 4:45 o'clock p.m., It Is Ordered that the further trial of this case be continued to the hour of 10:00 o'clock a.m., Saturday, May 19, 1945, to which time the parties and their counsel are excused. [37]

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Saturday, May 19, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

The Jury, and all members thereof, the parties and their counsel being present pursuant to recess, further proceedings of trial are had as follows:

Thereupon, the Jury is now duly admonished by the Court and excused to Monday, May 21, 1945, at the hour of two o'clock p.m.

The defendant's motion for a directed verdict is now further argued by respective counsel. Said motion is now submitted and by the Court taken under advisement.

And thereupon, at the hour of 11:00 o'clock a.m., It Is Ordered that the further trial of this case be continued to the hour of 2:00 o'clock p.m., Monday, May 21, 1945, to which time the parties and their counsel are excused.

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Monday, May 21, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

At the hour of two o'clock p.m., the Jury and all members thereof, the parties and counsel being present pursuant to recess, further proceedings of trial are had as follows:

It Is Ordered that the defendant's Motion for a Directed Verdict for the defendant be and it is denied.

Defendant's Case:

Frazee Burte is now sworn and examined for the defendant.

Earl J. Parkes is now sworn and examined for the defendant.

Defendant's Exhibit AE is now admitted in evidence.

Defendant's Exhibit AF, deposition of Blackman and Payne, is now admitted and read in evidence to the Jury.

Defendant's Exhibit AG, deposition of Alpha Marcum, is now admitted and read in evidence to the Jury.

And thereupon, at the hour of 4:40 o'clock p.m., It Is Ordered that the further trial of this case be continued to the hour of 10:00 o'clock a.m., Tuesday, May 22, 1945, to which time the Jury, being first duly admonished by the Court, the parties and their counsel are excused. [38]

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Tuesday, May 22, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

The Jury, and all members thereof, the parties and counsel being present pursuant to recess, further proceedings of trial are had as follows:

Defendant's Case Continued:

Zoa H. Zane is now called and examined on behalf of the defendant.

Defendant's Exhibit AH, check, is now admitted in evidence.

Defendant's Exhibit AI, check, is now admitted in evidence.

Defendant's Exhibit AJ, check, is now admitted in evidence.

Defendant's Exhibit AK, check, is now admitted in exhibit.

And the defendant rests.

Rebuttal:

The American Experience Table of Mortality is now read to the Jury.

Thereupon, the plaintiffs rest.

Both sides rest.

The Jury is now duly admonished by the Court and excused to the hour of two o'clock p.m., this date.

The defendant moves for a verdict directed for the defendant and said motion is now argued by respective counsel.

It Is Ordered that said motion be and it is denied.

And thereupon, at the hour of 11:20 o'clock a.m., It Is Ordered that the further trial of this case be

continued to the hour of 2:00 o'clock p.m., this date, to which time the Jury, being first duly admonished by the Court, the parties and their counsel are excused.

Subsequently, at the hour of 2:00 o'clock p.m., the Jury and all members thereof, the parties hereto and their counsel being present pursuant to recess, further proceedings of trial are had as follows:

All the evidence being in, the case is argued by respective counsel to the Jury. Whereupon, the Court duly instructs the Jury and said Jury retire at the hour of 4:30 o'clock p.m. in charge of two sworn bailiffs to consider of their verdict.

Louis Billard is present as Court Reporter.

It Is Ordered that the Marshal defray the expenses of the Jury and their bailiffs during the period of deliberation. [39]

Subsequently, counsel for both parties being present, the Jury return in a body into open Court at the hour of 10:45 o'clock p.m., and all members thereof being present are asked if they have agreed upon a verdict. Whereupon, the Foreman reports

that they have agreed and presents the following verdict, to-wit:

“Civ-642

ZOA H. ZANE and JACK ZANE, her husband,
Plaintiffs,
Against

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiffs and assess their damage at \$10,000.00.

E. P. KETCHIE,
Foreman.”

The verdict is read as recorded and no poll being desired by either side, the Jury is discharged from the further consideration of this case.

On motion of Terrence A. Carson, Esquire,

It Is Ordered that plaintiffs have judgment in accordance with the verdict. [40]

[Title of District Court and Cause.]

INSTRUCTIONS REQUESTED BY PLAINTIFFS

PLAINTIFFS' REQUESTED INSTRUCTION No. 1

The Court instructs the jury that a carrier of passengers is required to exercise the highest degree

of care in their transportation, and is responsible for injuries received by them while in the course of transportation which might have been avoided by the exercise of such care, and if you find that while the plaintiff, Zoa H. Zane, was being carried as a passenger by the defendant, Pacific Greyhound Lines, the bus upon which she was a passenger collided with a truck traveling ahead of said bus and in the same direction and that said plaintiff sustained injuries as a result of such collision, then a presumption of negligence arises which throws upon the defendant, Pacific Greyhound Lines, the burden of showing that the injuries were sustained without any negligence on its part, and in the absence of such evidence your finding should be that the accident and injuries to the plaintiff, Zoa H. Zane, were caused by the negligence of the defendant.

139 Pac. 73 (Cal.)

Given. [42]

PLAINTIFFS' REQUESTED INSTRUCTION

No. 2

You are instructed, gentlemen of the jury, that if you find from a preponderance of the evidence that, prior to the execution of the release introduced in evidence, an agent or agents of the defendant represented to the plaintiff, Zoa H. Zane, that her only injury was the injury to her right foot and lower right leg, which necessitated the amputation of said leg below the knee, and that she had not sus-

tained any other injuries, and that she would be able to use an artificial limb and avoid the use of crutches, and if you further find from a preponderance of the evidence that said representations were not true and that plaintiffs believed the same and relied thereon, and that had it not been for such representations and such belief and reliance, the plaintiffs would not have executed said release, then, although said agent or agents did not know that said representations were not true at the time they were made, and although there was no fraud or wrongful intent on the part of said agent or agents to deceive or defraud said plaintiff, the plaintiffs are not bound by said release so far as the injuries to the right femur or thigh bone of said plaintiff, Zoa H. Zane, and the results and consequences thereof, are concerned, and the plaintiffs can recover for such injuries and the results and consequences thereof if you find from a preponderance of the evidence that the negligence of the defendant was the proximate cause of said injuries.

Given. [43]

PLAINTIFFS' REQUESTED INSTRUCTION No. 3

You are instructed that if you find from the evidence that the claim agent of the defendant, prior to the execution of the release relied on by the defendant, represented to the plaintiff, Zoa H. Zane, that said plaintiff had sustained no injury except the injury to her right foot and lower leg, and that

she could use an artificial limb and that such representation was not true and that said representation was believed and relied upon by the plaintiffs, then said release is no defense to this action and your verdict should be for the plaintiffs for such damages as you find the plaintiffs have sustained on account of the injury to her right femur or thigh bone of the plaintiff, Zoa H. Zane, if you find such injury was proximately caused by the negligence of the defendant.

Refused. [44]

PLAINTIFFS' REQUESTED INSTRUCTION

No. 4

The Court instructs the jury that, if you find that the negligence of the defendant was the proximate cause of injuries to the plaintiff, then there was a legal obligation imposed by law upon the defendant to furnish such plaintiff reasonable hospital and medical care and treatment and in such event the defendant cannot be heard to say that such care and treatment was unauthorized.

Refused. [45]

PLAINTIFFS' REQUESTED INSTRUCTION

No. 5

The Court instructs the jury that if you find from the evidence that, prior to the execution of the release introduced in evidence, Dr. Blackman represented to the plaintiff, Zoa H. Zane, that the only

injuries she had sustained as a result of the accident were the injuries to her right lower leg and foot that necessitated the amputation, and that said plaintiff could use an artificial limb, and if you further find from the evidence that said representations were not true and that said plaintiff, as a result of said accident, sustained a fracture of her right femur or thigh bone resulting in a non-union of said bone with the hip bone, and that said plaintiff could not and cannot use an artificial limb, and if you further find that said representations were believed and relied upon by the plaintiffs, and if you further find that the claim agent of said defendant knew of, approved and ratified said representations, and that the defendant approved the settlement and accepted the benefits thereof, then the defendant is estopped from claiming that said representations cannot be attributed to it, and said release is not a bar to this action.

Given. [46]

PLAINTIFFS' REQUESTED INSTRUCTION
No. 6

The Court instructs the jury that if you find from a preponderance of the evidence that the claim agent of the defendant, prior to the signing by the plaintiffs of the release relied on by the defendant, had left with the plaintiff, Zoa H. Zane, a form of release in which the consideration was stated to be \$14,500 and in which the accident was stated to have resulted in the loss of said plaintiffs' right

foot and lower leg, and if you further find from the evidence that said plaintiff was led by said claim agent to believe that the release which she was signing and which she signed was the form of release that said claim agent had left with said plaintiff and that as a result said plaintiff signed said release introduced in evidence, then said release is no defense in this suit and your verdict should be for the plaintiffs for such damages as you may find the plaintiffs have sustained by reason of and as a result of the injury to the right femur or thigh bone of the plaintiff, Zoa H. Zane, if you further find from a preponderance of the evidence that the accident was caused by the negligence of the defendant and that such negligence was the proximate cause of said injury.

Given. [47]

PLAINTIFFS' REQUESTED INSTRUCTION No. 7

The Court instructs the jury that if you find from the evidence that if, at the time of the execution of the release introduced in evidence, the plaintiffs did not have knowledge of, or suspect the existence of, the injury to the right femur or thigh bone of the plaintiff, Zoa H. Zane, and that the defendant had no knowledge of said injury, and, if you further find from the evidence that if said injury to said right femur or thigh bone had been known to the plaintiffs this must have materially affected their settlement with the defendant, then said re-

lease did not and does not extend to or cover said injury to said right femur or thigh bone or the results or consequences thereof, but only extended to and covered the injury to the right foot and lower leg of the plaintiff, Zoa H. Zane.

Withdrawn. [48]

PLAINTIFFS' REQUESTED INSTRUCTION
No. 8

The Court instructs the jury that if you find from the evidence that, prior to the execution of the release introduced in evidence, Dr. Blackman represented to the plaintiff, Zoa H. Zane, that the only injuries she had sustained as a result of the accident were the injuries to her right lower leg and foot that necessitated the amputation, and that said plaintiff could use an artificial limb, and if you further find from the evidence that said representations were not true and that said plaintiff as a result of said accident sustained a fracture of her right femur or thigh bone resulting in a non-union of said bone with the hip bone, and that said plaintiff could not and cannot use an artificial limb, and if you further find that said representations were believed and relied upon by the plaintiffs, and if you further find that Dr. Blackman, at the time of making said representations, was the agent of the defendant, then said release is not a defense to this action.

Refused. [49]

PLAINTIFFS' REQUESTED INSTRUCTION
No. 9

The Court instructs the jury that it is for you to decide whether representations were made by the defendant or its agents. In determining this I instruct you that direct evidence is not indispensable to prove agency, but that this may be shown by other facts and circumstances from which the agency may be properly inferred, such as the relations of the parties to each other and their conduct in reference to the subject matter involved in the case.

Given. [50]

PLAINTIFFS' REQUESTED INSTRUCTION
No. 10

The Court instructs you that if you find for the plaintiffs, then it is your duty to fix the amount of damages as shown by the evidence relative thereto. In fixing the amount of such damages, if any, you may take into consideration the age of the plaintiff, Zoa H. Zane, the extent of the injuries, if any, to the right femur or thigh bone of said plaintiff, and the results and consequences thereof, her physical and mental pain, suffering and inconvenience already endured, if any, and that she may endure in the future as a result of such injury, if any, and the character of such injury, whether temporary or permanent; you may also consider any reasonable expense incurred in the treatment of said injury

and her inability, if any, to work and earn money, and to perform her duties and to engage in gainful pursuits, and any impairment of her physical powers and any limitations placed upon her in the enjoyment of her physical faculties by reason of said injury, and allow such sum as will under the evidence compensate the plaintiffs for said injury, not, however, exceeding the sum of \$51,565, the amount asked for by the plaintiffs in their complaint.

Given.

[Endorsed]: Filed May 22, 1945. [51]

[Title of District Court and Cause.]

INSTRUCTIONS REQUESTED BY
DEFENDANT

INSTRUCTION No. 1

You are instructed to return a verdict for the defendant.

Refused. [53]

INSTRUCTION No. 2

You are instructed that the plaintiffs in this case assert and testify that at the time they signed and executed the written release which is in evidence they did not know that the plaintiff, Zoa Zane, had suffered injuries to to her right hip and possibly other injuries and assumed that her only injury was the amputation of her right leg below the knee.

In this respect, you are instructed that the release in question contains, among other provisions, the following clause:

“It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.”

The plaintiff, Zoa Zane, knew generally when she signed the release what it meant and that its effect was to bar her right to sue for any injuries received by her in the bus accident in question although she did not know of or suspect such injuries, or if she attached her signature to said release carelessly and with indifference to her rights and without making any effort to determine the contents of said release, then the release must be upheld and the plaintiffs are precluded from recovering in this action unless you find from clear, convincing, and satisfactory evidence that the plaintiffs were induced to sign the release by intentional fraud and deceit on the part of the defendant as I have defined fraud and deceit in other instructions given you in this case.

So. Pac. Co. v. Gastelum (Ariz.), 283 Pac. 719. 45 Am. Jur. p. 684.

Berry v. Struble (Calif.), 66 Pac. (2d) 746. Refused. [54]

INSTRUCTION No. 3

You are instructed that the plaintiffs in their

complaint, among other things, charge that the written release in evidence was executed by the plaintiffs by reason of certain intentional false and fraudulent representations or concealment by the defendant or its agents. You are further instructed that the following elements are necessary to constitute intentional fraud on the part of any person:

(1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) his consequent and proximate injury.

It is necessary, of course, that plaintiffs should prove all of these essentials as to any claim of intentional fraud. The nature and extent of the proof required depends to a great deal upon the relationships existing between defendant and plaintiffs. If they were dealing at arm's length, a greater degree of proof is required than if a confidential relationship existed between them.

Waddell v. White, 56 Ariz. 420; 108 Pac. (2d) 565.

Modified. [55]

INSTRUCTION No. 4

You are instructed that fraud on the part of any person is never presumed. It must be established by clear, convincing and satisfactory evidence. You

cannot find fraud to exist on a mere suspicion as to the possibility thereof.

Rice v. Tissow, 57 Ariz. 230; 112 Pac. (2d) 866.

Given. [56]

INSTRUCTION No. 5

You are instructed that the plaintiffs in this case contend that they were induced to execute the release in question by reason of false representations made to them that the plaintiff, Zoa Zane, had suffered no fractures from the bus accident except the fractures for which she was treated at the Indio Hospital. They further contend that such representations were false in that the plaintiff, Zoa Zane, in said bus accident had sustained a fracture of the femur of her right hip in addition to the fractures treated at the hospital.

You are further instructed that the burden is upon the plaintiffs to prove to your satisfaction by a preponderance of the evidence, that Zoa Zane did suffer a fracture of the femur of her right hip in said bus accident, and that such fracture existed at the time she was in the Indio Hospital, before you can give consideration to any other features of the case concerning the liability of the defendant, if any.

You are not permitted to presume that representations made to the plaintiffs, or either of them, were false merely because there is a possibility that the fractured femur could have been caused by the

bus accident. (Before you can find the representations to be false, the evidence of the falsity must be clear, convincing and satisfactory.)

Rice vs. Tissow, 57 Ariz. 230; 112 Pac. (2d) 866.

Modified. [57]

INSTRUCTION No. 6

You are instructed that although you may find that plaintiff, Zoa Zane's, hip was fractured in the bus accident, and it was falsely represented to her that there was no fracture of the hip, yet the falsity of such representation, if any, will not entitle the plaintiffs to recover unless they go further and prove to your satisfaction by clear and convincing evidence that the falsity of such representation was known to the person making the same at the time he made it, and that he knowingly made a false representation for the purpose of inducing the plaintiffs to execute the release in question, and that plaintiffs relied upon the same.

Waddell vs. White (Ariz.) 108 Pac. (2d) 565.

Refused. [58]

INSTRUCTION No. 7

You are instructed that the plaintiffs claim and assert in their complaint that in making a settlement and signing the release in question they relied upon certain statements made to them by one, Dr. Blackman, whom they allege to be an agent of

the defendant company. Defendant in its answer denies that said Dr. Blackman was or is an agent of the defendant.

Therefore, before you can give any consideration whatever to the alleged representations on the part of Dr. Blackman the plaintiffs must first prove to your satisfaction by a preponderance of the evidence that said Dr. Blackman was at the time that he made such representations, an agent of the defendant company, authorized to make the representations.

U. S. Smelting, Refining and Mining Exploration Company vs. Wallapai Mining Development Company, 27 Ariz. 126, 230 Pac. 1109.

Given. [59]

INSTRUCTION No. 8

You are instructed that while agency does not need to be proved by direct testimony, and may be established from circumstances such as relationship of parties to each other and to the subject matter and their acts and conduct, but the acts and conduct of the principal alone and not of the agent must be relied upon to show agency. Agency cannot be proved by declarations of the agent above or of a third person, other than the principal.

Therefore in this case in determining whether or not Dr. Blackman was an agent of the defendant company, you cannot take into consideration the acts and declarations of Dr. Blackman himself alone or of third persons. You must be governed solely

by the acts, conduct and declarations of the defendant company or of its proven, authorized agents. If the only proof of agency are the acts and declarations of Dr. Blackman himself, then you must find that no agency existed.

Bristol vs. Moser, 55 Ariz. 185, 99 Pac. (2d) 706.

Modified. [60]

INSTRUCTION No. 9

You are instructed that although you may find from a preponderance of the evidence that the relation of principal and agent did exist to some extent between the defendant company and Dr. Blackman, and statements were made by such doctor to plaintiffs, or one of them, but that said Dr. Blackman was without authority to represent the defendant in the negotiation of a settlement with and a release from the plaintiffs on account of injuries incurred, and such statements were not made for the purpose of influencing the plaintiffs in making a settlement, a release subsequently negotiated by an agent of the defendant company without knowledge on his part of the statements made by the doctor cannot be avoided by reason of such statements.

45 Am. Jur., p. 688.

Refused. [61]

INSTRUCTION No. 10

You are instructed that although the defendant company may use and have used Dr. Blackman to

treat its own employees for illness and accidents not occurring in the course of employment, under a hospital and medical benefit plan established by the company and for which deductions are made from the payroll of the employees; that does not necessarily constitute Dr. Blackman an agent of the company insofar as injured passengers and third persons are concerned. That agency, if any, would be restricted to employees entitled to the medical and hospital benefits provided by the company.

Modified. [62]

INSTRUCTION No. 11

You are instructed that there is no legal duty upon a carrier of passengers to furnish medical and hospital services to a passenger injured in an accident other than first aid. If liability on the part of the carrier for the accident and injuries to the passengers is established, then the carrier becomes liable in damages to the passenger, which includes medical and hospital expenses incurred by him; but that does not place the duty upon the carrier to furnish a physician, medical and hospital assistance to the passenger except such as are necessary for first aid in the first instance.

The only duty that develops upon the carrier on the injury of a passenger is the duty invoked by the humanitarian doctrine—that is, the duty to use every effort to get the injured passenger to a physician or a hospital for treatment. That fact that a carrier complies with such humanitarian doctrine and takes the injured passenger to a physician for

treatment does not in itself constitute such physician an agent of the carrier.

Modified. [63]

INSTRUCTION No. 12

You are instructed that the fact that the defendant company as a part of the settlement with the plaintiffs for their claim for injuries to the plaintiff, Zoa Zane, paid the doctor's and hospital bills incurred by Zoa Zane, does not alone constitute the doctor and hospital, or either of them, an agent of the defendant.

Modified. [64]

INSTRUCTION No. 13

Even though you should find from the evidence that there were false representations made to the plaintiffs, and that they were induced thereby to accept the money and execute the release, yet if you should further find from the evidence that they failed to rescind the release with reasonable diligence after discovery of the fraud and to notify the defendant of such rescission, and continued to retain and use the consideration paid them for the release for an unreasonable length of time after discovery of the fraud, then the plaintiffs are deemed to have ratified the release, and they cannot now set aside the release, and under such a state of facts your verdict must be for the defendant.

Colorado Springs, etc. Hy. Co. vs. Huntling
(Colo.), 181 Pac. 129, 45 Am. Jur. p. 690.

Refused. [65]

INSTRUCTION No. 14

You are instructed that if you should find from a preponderance of the evidence that the plaintiffs in this case are entitled to recover, and the release should be set aside and voided, but that the plaintiffs are unable to make restitution to the defendant of the amount or amounts received by them on account of said release, then the defendant is entitled to receive full credit for the amount paid by it to the plaintiffs for said release. In other words, if you should find for the plaintiffs, in arriving at your verdict for damages, if any, to which they are entitled you must first deduct all amounts received by them from the defendant on account of the release in question.

45 Am. Jur. p. 716.

Refused.

[Endorsed]: Filed May 22, 1945. [66]

[Title of Court and Cause.]

. VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiffs and assess their damage at \$10,000.00.

E. P. KETCHIE,
Foreman.

[Endorsed]: Verdict filed May 22, 1945. [67]

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Monday, May 28, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

It Is Ordered that the form of Judgment presented herein by counsel for the plaintiffs and approved as to form by counsel for defendant, pursuant to verdict rendered herein, be approved, entered, filed and spread upon the minutes as the judgment herein as follows:

Civ-642

ZOA H. ZANE and JACK ZANE, her husband,
Plaintiffs,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

JUDGMENT

On the 17th day of May, 1945, the above entitled action came on for trial, the cause having been regularly set down for trial by stipulation of respective counsel. The plaintiffs appeared in person and by their attorneys, Terrence A. Carson and Floyd M. Stahl, and the defendant appearing through its attorneys, Baker & Whitney. A jury of twelve men good and true were impaneled and sworn to try said cause. Witnesses on the part of the plaintiffs

and the defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and the instructions of the Court, the Jury retired to consider of their verdict, and on May 22, 1945, returned into open Court the following verdict which is in words and figures as follows: to-wit:

ZOA H. ZANE and JACK ZANE, her husband,
Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find for the plaintiffs and assess their damage at \$10,000.00.

E. P. KETCHIE,
Foreman.

(Back)

Verdict—Filed May 22, 1945. Edward W. Scruggs, Clerk.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is Ordered, Adjudged and Decreed that the plaintiffs, Zoa H. Zane, and Jack Zane, her husband, do have and recover from the defendant, Pacific Greyhound Lines, a corporation, the sum of Ten Thousand (\$10,000.00) Dollars, with six per cent (6%) interest from the 22nd day of

May, 1945, together with plaintiffs' costs taxed and allowed in the sum of \$23.26.

Done in Open Court This day of
....., 1945.

.....

Judge.

Received copy and approved as to form this
28th day of May, 1945.

BAKER & WHITNEY,

Attorneys for Defendant.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT FOR DEFEND-
ANT NOTWITHSTANDING THE VER-
DICT AND FOR JUDGMENT IN ACCORD-
ANCE WITH MOTION FOR DIRECTED
VERDICT; AND ALTERNATIVE MOTION
FOR NEW TRIAL

Now Comes the defendant by its attorneys and pursuant to Rules 50 and 59, Rules of Civil Procedure for the District Courts of the United States, moves the Court for an order setting aside and vacating verdict and judgment rendered and entered in the above captioned and numbered cause in favor of the plaintiffs and directing the rendition and entry of judgment in favor of the defendant in accordance with the motion for directed verdict; and, in the alternative, for an order granting defendant a new trial, for the following reasons and upon the following grounds:

I.

GROUNDS FOR JUDGMENT NOTWITH-
STANDING THE VERDICT

(1) The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant made at the close of all the evidence and the Court should have granted such motion and should have directed the jury to return a verdict in favor of the defendant and the court should now render and enter judgment in favor of the defendant in accordance with motion for directed verdict and notwithstanding the verdict in favor of the plaintiffs. [70]

(2) The evidence is insufficient to sustain a cause of action in favor of the plaintiffs and is insufficient to support the verdict or the judgment rendered in accordance with the verdict, and the verdict and the judgment are not justified by the evidence and are contrary to the evidence and the law.

II.

GROUNDS FOR NEW TRIAL

(1) That there were errors of law appearing at the trial and during the progress of the cause.

(2) That the Court erred in admitting evidence on behalf of the plaintiffs over the objection of defendant.

(3) That the Court erred in charging the Jury.

(4) That the Court erred in that contradictory

and conflicting instructions were given to the jury which misled and confused the jury.

(5) The Court erred in that there were harmful repetitions in many instructions in favor of the plaintiffs' theory of the case.

(6) The Court erred in giving plaintiffs' requested instructions numbered 2, 5, 6 and 10, upon the grounds: That said instructions do not properly state the law applicable to the facts in this case; that said instructions are not in accordance with the evidence introduced in this case; that in said instructions rules of law are stated which are not applicable to the facts of this case and in giving said requested instructions the court unduly, by repetition, accentuated plaintiffs' theory of the case; that there is conflict and contradiction in said instructions misleading to the jury.

(7) The Court erred in refusing defendant's requested instructions numbered 1, 2, 6, 9, 13 and 14, upon the grounds that said instructions, and each of them, properly state the [71] law applicable to the facts of this case and the defendant was entitled to have each and every one of said instructions given to the jury and the refusal of the same, and each of them, resulted in the case being submitted to the jury without proper instructions on defendant's theory of the case, and the refusal of said instructions, and each of them, greatly prejudiced the defendant.

(8) The Court erred in admitting, over the objection of the defendant, evidence offered by

plaintiffs of conversations with, and acts and declarations by, persons not proved to be agents or representatives of the defendant, or authorized to act for or in behalf of defendant.

(9) The Court erred in admitting, over the objections of the defendant, opinion testimony of experts based upon hypothetical questions not proper in form and not properly stating all of the evidence introduced in the case pertinent to the matter in question and improperly stating facts which were not in evidence in the case.

(10) That the damages awarded plaintiffs are excessive and appear to have been given under the influence of passion or prejudice.

(11) That the verdict of the jury was influenced by passion or prejudice.

(12) The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant at the close of the plaintiffs' evidence.

(13) That the Court erred in denying defendant's Motion for an instructed verdict at the close of all the evidence.

(14) That the evidence is insufficient to sustain a cause of action in favor of the plaintiffs and is insufficient [72] to support the verdict or judgment and the verdict and judgment are not justified by the evidence and are contrary to the evidence and to the law.

Wherefore, defendant prays that the verdict of the jury herein and the judgment rendered and entered thereon be set aside and vacated and a judgment be rendered and entered herein in favor of the defendant in accordance with Motion for Directed Verdict notwithstanding the Verdict, in favor of the plaintiffs; and in the alternative, that the Court set aside said verdict and judgment in favor of the plaintiffs and grant the defendant a new trial herein.

Dated at Phoenix, Arizona, this first day of June, 1945.

BAKER & WHITNEY.

By ALEXANDER B. BAKER,
Attorneys for Defendant.

[Endorsed]: Filed Jun. 1, 1945. [73]

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Monday, June 4, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Pursuant to stipulation of counsel herein,

It Is Ordered that plaintiffs be allowed to and including June 9, 1945, to file reply to defendant's memorandum on Motion for Judgment, notwithstanding the verdict.

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Friday, June 8, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

Pursuant to stipulation of counsel filed herein, .

It Is Ordered that the defendant's Motion for Judgment for defendant, notwithstanding the Verdict, and for Judgment in accordance with Motion for Directed Verdict, and alternative motion for new trial, be continued for hearing from June 11, 1945, to June 18, 1945, and

It Is Ordered that plaintiffs may have to and including June 12, 1945, to serve and file their brief or memorandum of points and authorities in opposition to said motions.

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Monday, June 18, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

Defendant's Motion for Judgment for defendant notwithstanding the verdict and for judgment in

accordance with Motion for Directed Verdict and Alternative Motion for New Trial come on regularly for hearing this day. [93]

Alex Baker, Esquire, is present on behalf of the defendant and Terrence Carson, Esquire, and Floyd M. Stahl, Esquire, are present for the plaintiffs.

The defendant's motions are now duly argued, and

It Is Ordered that said motions be and they are submitted without any further argument and by the Court taken under advisement.

It Is Further Ordered that the defendant be and it is allowed five days within which to file a Supplemental Memorandum herein and the plaintiffs be and they are allowed five days thereafter to reply thereto.

[Title of Court and Cause.]

April, 1945, Term at Phoenix

Minute Entry of Wednesday, July 25, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

It Is Ordered that defendant's Motion for Judgment for defendant notwithstanding the verdict and for judgment in accordance with Motion for Directed Verdict and Alternative Motion for New Trial be and they are denied.

[Title of Court and Cause.]

October, 1945, Term at Phoenix

Minute Entry of Thursday, October 18, 1945

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

Alex Baker, Esquire, is present on behalf of the defendant. No appearance is made by or on behalf of the plaintiffs.

Counsel for the defendant now presents the defendant's Supersedeas and Cost Bond on Appeal in the sum of \$15,000.00 with the Saint Paul Mercury Indemnity Company as surety thereon, and

It Is Ordered that said bond be and it is hereby approved. [94]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Pacific Greyhound Lines, a corporation, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about the 28th day of May, 1945, and from the order denying defendant's "Motion for Judgment for Defendant Notwithstanding The Verdict and for Judgment In Accordance With Motion for Directed Verdict; and Alternative Motion for New Trial" entered in this action on or

about the 25th day of July, 1945, and from the whole and all of said judgment and order.

Dated at Phoenix, Arizona, this 18th day of October, 1945.

BAKER & WHITNEY,
Attorneys for Pacific Grey-
hound Lines, Defendant.

[Endorsed]: Filed Oct. 18, 1945. [95]

[Title of District Court and Cause.]

SUPERSEDEAS AND COST BOND

Know All Men By These Presents:

That we, Pacific Greyhound Lines, a corporation, defendant above named, as principal, and Saint Paul-Mercury Indemnity Company, of Saint Paul, Minnesota, as surety, are held and firmly bound unto Zoa H. Zane and Jack Zane, her husband, plaintiffs above named, in the full and just sum of Fifteen Thousand (\$15,000) Dollars, to be paid to the said Zoa H. Zane and Jack Zane, their certain attorneys, heirs, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of October, 1945.

Whereas, lately in the District Court of the United States for the District of Arizona, in a suit

depending in said court, between Zoa H. Zane and Jack Zane, her husband, as plaintiffs, and Pacific Greyhound Lines, a corporation, as defendant, a judgment was rendered and entered in favor of said plaintiffs and against the said defendant, Pacific Greyhound Lines, and thereafter said court did render and enter an order denying said defendant's "Motion for Judgment for Defendant [96] Notwithstanding the Verdict and for Judgment In Accordance With Motion for Directed Verdict; and Alternative Motion for New Trial;" and the said defendant, Pacific Greyhound Lines, having filed in said Court a notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said judgment and order.

Now, the condition of the above obligation is such that if the said Pacific Greyhound Lines, defendant above named, shall prosecute its said appeal to effect and satisfy said judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages the appellate court may award if the judgment be modified, then the above obligation

to be void; otherwise to remain in full force and effect.

PACIFIC GREYHOUND LINES.

[Seal] By EARL F. PARKS,
Superintendent, Principal.

SAINT PAUL-MERCURY IN-
DEMNITY COMPANY, of Saint
Paul, Minnesota.

[Seal] By GEORGE H. MYERS,
Attorney-in-Fact, Surety.

The foregoing bond and surety approved, and when filed it shall operate as a supersedeas.

DAVE W. LING,
United States District Judge.

[Endorsed]: Filed Oct. 18, 1945. [97]

[Title of District Court and Cause.]

DESIGNATION OF RECORD AND PROCEED-
INGS TO BE CONTAINED IN RECORD
ON APPEAL

To: Edward W. Scruggs, Clerk of above court, and
Mr. Terrence A. Carson, and Messrs. Stahl &
Murphy, Attorneys for Plaintiffs:

Now Comes Pacific Greyhound Lines, a corpora-
tion, by its attorney, defendant above named and
appellant, and designates the following records and
proceedings in the above cause to be contained in
the record on appeal:

All pleadings, evidence, depositions, testimony, exhibits, minutes, documents, papers, records and proceedings in this action, including this designation and all orders, papers and proceedings hereafter entered, filed or had in this action in this court.

There is filed herewith two copies of the Reporter's Transcript of the Evidence.

Dated: October 18, 1945.

BAKER & WHITNEY.

By ALEXANDER B. BAKER,
Attorneys for Defendant.

Receipt of Copy acknowledged October 18, 1945.

TERRENCE A. CARSON,
STAHL & MURPHY.

By TERRENCE A. CARSON,
Attorneys for Plaintiffs.

[Endorsed]: Filed Oct. 18, 1945. [98]

[Title of District Court and Cause.]

STIPULATION FOR DIMUNITION OF
RECORD

It Is Hereby Stipulated and Agreed by and between attorneys for plaintiffs and defendant above named that it shall not be necessary for the Clerk of the above entitled court to transmit to the Clerk of the United States Circuit Court of Appeals for the 9th Circuit as a part of the record on appeal

the following named papers, documents and exhibits, to-wit:

1. Praeceptum for Summons.
2. Summons.
3. Stipulation extending time for deft. to plead and answer.
4. Stipulation extending time for deft. to plead and answer.
5. Plaintiffs' Motion and Notice of Setting Cause for Trial.
6. Plaintiffs' Demand for Jury.
7. Plaintiffs' Praeceptum for Subpoena to Homer F. West.
8. Plaintiffs' Praeceptum for Subpoena to Homer F. West.
9. Depositions of Zoa H. Zane and Jack Zane.
10. Subpoena for Homer F. West with Marshal's nonest return.
11. Plaintiffs' Memorandum of Cost and Disbursements.
12. Defendant's Objection to Plaintiffs' Statement of Costs.
13. Stipulation for Plaintiffs to File Memorandum.
14. Stipulation to continue hearing on Motions to June 18, 1945.
15. Receipt of Reporter for file and exhibits.

16. Receipt of Reporter for Depositions and requested instructions.

17. Plaintiffs' exhibits Nos. 3, 4, 8, 9, 10 and 11 in evidence which are x-ray photographs.

18. Defendant's exhibits F to J in evidence, inclusive, which are x-ray photographs.

19. Defendant's Exhibit A-F in evidence which is depositions of Dr. W. H. Blackman and Mrs. Gladys Payne, both of which are transcribed verbatim and full in the reporter's transcript of evidence. [99]

20. Defendant's Exhibit A-G in evidence, being the deposition of Alpha Marcum which is transcribed verbatim and in full in the reporter's transcript of evidence.

Dated this 25th day of October, 1945.

TERRENCE A. CARSON,
STAHL & MURPHY.

By FLOYD M. STAHL,
Attorneys for Plaintiffs.

BAKER & WHITNEY,
By ALEXANDER D. BAKER,
Attorneys for Defendant.

[Endorsed]: Filed Nov. 5, 1945. [100]

[Title of District Court and Cause.]

ORDER TO SEND UP ORIGINAL EXHIBITS

On motion of attorneys for Defendant:

It Is Ordered that in addition to the transcript of the record on appeal in this action the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the following original exhibits in this action to be by him safely kept and returned to this court upon the final determination of this action in said Circuit Court of Appeals, namely:

All of plaintiffs' and defendant's exhibits in evidence, save and except those expressly excluded from the record on appeal by "Stipulation for Diminution of Record" signed by attorneys for plaintiffs and defendant and on file herein.

Dated November 6, 1945.

DAVE W. LING,

U. S. District Judge.

[Endorsed]: Filed Nov. 7, 1945. [101]

CERTIFICATE TO TRANSCRIPT OF
RECORD ON APPEAL

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said Court, including the records, papers and files in the case of Zoa H. Zane and Jack Zane, her husband, Plaintiffs, vs. Pacific Greyhound Lines, a corporation, Defendant, numbered Civ-642 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 101, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Designation of Record and Proceedings to be Contained in Record on Appeal and Stipulation for Diminution of Record, filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$18.95 and that said sum has been paid by counsel for the appellant.

I further certify that plaintiffs' original exhibits numbered 1, 2, 5, 6, 7, and 12, defendant's original exhibits numbered A, B, C, D, E, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AB, AC, AD, AE, AH, AI, AJ, and AK, and the original Reporter's Transcript, in two volumes, filed in said cause, are transmitted herewith and made a part of this record.

Witness my hand and the seal of said Court at Phoenix, Arizona, this 23rd day of November, 1945.

[Seal]

EDWARD W. SCRUGGS,
Clerk.

By WM. H. LOVELESS,
Chief Deputy Clerk. [102]

In the United States District Court for the
District of Arizona

Civil 642

ZOA H. ZANE, and JACK ZANE, her husband,
Plaintiffs,

vs.

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

REPORTER'S TRANSCRIPT

The above entitled and numbered cause came on duly and regularly to be heard in the above-entitled Court, before Honorable Dave W. Ling, Judge, presiding with a jury, commencing at the hour of 10 o'clock A. M. on the 17th day of May, 1945.

The plaintiffs were represented by their attorneys, Floyd Stahl of Messrs. Stahl and Murphy, and Terrence A. Carson.

The defendant was represented by Alexander B. Baker of Messrs. Baker and Whitney.

Thereupon the following proceedings were had:

The Clerk: Civil 642, Zoa H. Zane and Jack Zane, Plaintiffs, versus Pacific Greyhound Lines.

The Court: Ready?

Mr. Carson: Yes, we are ready. [1*]

Mr. Baker: The defendant is ready.

Mr. Carson: Your Honor, with this exception: we have got to call two or three doctors, and it might be—we might have to put them on out of

*Page numbering appearing at top of page of original Reporter's Transcript.

turn, or something like that. Would there be any objection to that, Mr. Baker, because the doctors are very busy. I have talked to them.

Mr. Baker: I have enough trouble with them myself so I will be quite lenient.

Mr. Carson: All right.

The Court: Call the names of eighteen jurors. As your names are called, come forward.

Thereupon a jury was duly empanelled and sworn to try the cause; the pleadings of the parties were read to the jury and statements of the issue were made by the respective counsel as follows:

Mr. Carson: Your Honor, Mr. Baker, and gentlemen of the jury. Gentlemen of the jury, we will show that in December, I think it was 1942, about the tenth of the month, Mrs. Zane left with a youngster of hers and went to work in—was going to a war plant in California to work. She had had some conversation and correspondence with the war plant about going to work over in California. She purchased a ticket and got on the bus and went over there, and on the morning, I [2] think of the eleventh of December, 1942, a short ways out of Indio, California, there was a wreck. We will show that the driver of the bus ran into a truck over there and that she suffered a very severe injury. Her leg was so mangled that it had to be amputated below the knee. We will show, gentlemen of the jury, that she was taken to the Coachella Valley Hospital in Indio, and there was a surgeon named Dr. Blackman who amputated her leg, and shortly

after she arrived in the hospital she was given an anesthetic and she was told by the nurse that the Greyhound would take care of the bill and that she needn't worry about it.

Mr. Baker: If the Court please, that evidence would be incompetent and therefore it is not proper to put in that statement.

Mr. Carson: Well, Your Honor, we will show it is competent and it is their part of the case. Now, I don't want to make any statement that is not the law and I will assure the Court that I'm not going to. We have gone into the question very thoroughly.

The Court: All right.

Mr. Carson: That she stayed in the hospital over there for some months. I think the injury was on a Friday, and in a very short time the [3] claim agent for the Greyhound came to see her at the hospital, and on the first visit he gave her his card and on the second visit, or shortly thereafter, he told her that Dr. Blackman was a good doctor and he was their doctor and that she would be well taken care of.

After staying in the hospital for some time—she received treatment and her knee was—there was some trouble about her knee and they performed an operation on her knee—below the knee, another operation.

We will show that as long as—that the claim agent there came on an average sometimes of once or twice a week. We will show that he finally made a proposition of settlement. We will show, gen-

tlemen of the jury, that I think about a week after the accident, the husband went to California. He was down in Yuma and they sent him a telegram but it never reached him until a week after. That was about five days, and as soon as he found out about his wife being in a delicate condition, why, he went over there and the claim agent talked with him, I think, on the Sunday after he arrived. There was some suggestion by the husband to take his wife clear over to a Los Angeles hospital. The claim agent said that Dr. Blackman was a good [4] surgeon and was a good bone doctor and was just as good as any other doctor and took care of the Greyhound cases, and he was their doctor and he would take care of the bill, and in the course of the while she was in the hospital there, we will show you beyond any question of doubt that she was in pain and she took sedatives or narcotics nearly all the time, and the claim agent, on his visits, suggested settlements and they talked over settlements, and finally, along, I think sometime in February, I don't know the exact date of that, but we will show that they talked settlement.

Now, the basis of the settlement was \$14,500.00.

Now, we will show that the Greyhound paid the doctor's bill, but we will also show, gentlemen of the jury,—and now we come to the crucial part of this case—that she had a fractured hip, that she suffered pain in the knee and on the right side, and she asked Dr. Blackman about it and asked the claim agent about it, and the claim agent assured her that everything was all right, that there was

nothing wrong with her at all, that she would be able to be a normal person.

Now, Dr. Blackman 'phoned a supply man in Los Angeles; that is, a manufacturer of artificial limbs, and he came up there, and Mrs. Zane was [5] shown pictures of persons using artificial limbs, that she could stand and do everything that a normal person could, and we will show, gentlemen, that Dr. Blackman represented to her that she could do that, and the claim agent represented to her and made the positive assurance that there was nothing wrong with her at all.

We will show that this right hip was not X-rayed. X-ray pictures were taken apparently of the knee but not the right hip.

We will show that some days before the settlement Mr. Cameron brought a release to her room filled out with the amount of \$14,500.00, and that it described injuries in detail, where it took place and described the injury, amputated below the knee, that that was left with her for some few days, and there was one release and it was left with her.

We will show that on the day of the settlement Mrs. Zane was rather hysterical; she was crying around, and the claim agent came to the place, stormed around and said he was going to lose his job if the case was not settled, or something like that, and finally the husband and the wife signed the release.

We will show that after this artificial [6] limb agent—the man that made the artificial limbs from

Los Angeles said to Mrs. Zane that one of her legs was $2\frac{1}{2}$ inches shorter than the other; there was something wrong, probably better X-ray her hip. She talked to Dr. Blackman and Dr. Blackman never answered her, but assured her that nothing was wrong with her; that she needed X-rays, and he assured her that she was reading too many magazines.

We will also show that she was fitted with a limb, and shortly after she came to Phoenix, why, she went to a limb company here and tried to get—she couldn't use her artificial limb. She was led to believe she could walk out of the hospital, and later this man here found out, the man that makes the artificial limbs, I have forgotten his name, the shop here, he measured her and found it was two inches short. X-rays were taken and showed that her hip was broken, which Dr. Lytton-Smith, her surgeon, performed an operation and healed the situation.

We will show she has been permanently and totally disabled.

Now, gentlemen of the jury, we will admit that if the settlement had been as represented, or there had not been deceit and fraud practiced, [7] the settlement would have been very satisfactory.

We will show that due to the fraudulent representations of the defendant, its agent, this woman here has been made a hopeless cripple all her life, that she can't be a wife, she can't have children, she can't be a normal wife; she has to go around with crutches under her arms; that she can't take

care of her children and she continually suffers pain, and we are asking, gentlemen, for damages in the sum of \$50,000.00.

Now, we expect to prove each one of these allegations, and when we do that, gentlemen, we will ask for a verdict at your hands.

I thank you.

Mr. Baker: I will reserve my statement until the finish of the case.

The Court: Call your first witness.

Mr. Stahl: Mrs. Zane.

ZOA H. ZANE

was called as a witness in her own behalf, and being first duly sworn, testified as follows:

Direct Examination

Mr. Stahl:

Q. State your name.

A. Mrs. Zoa Zane. [8]

Q. Mrs. Zane, you are one of the plaintiffs in this case? A. Yes, sir.

Q. Where do you reside?

A. 1722 W. Tonto, Phoenix.

Q. How long have you resided in Phoenix?

A. For about nine years.

Q. You are the wife of Jack Zane?

A. Yes, sir.

Q. When were you and Jack Zane married?

A. In June of 1938.

(Testimony of Zoa H. Zane.)

Q. And do you have any children?

A. We have two boys, aged five and three.

Q. Now, were you living in Phoenix, you and your husband, residents of Phoenix in the month—during the month of December, 1942?

A. Yes, sir.

Q. And did you live in the same place as you live now? A. No.

Q. Another address in Phoenix? A. Yes.

Q. And you have been residents of Arizona right along? A. Yes, sir.

Q. Were you married here? [9] A. Yes.

Q. Now, in the month of December, 1942, did you plan a trip to California? A. Yes, sir.

Q. And what was the purpose of that?

A. I was going to work in the Douglas Aircraft in Long Beach.

Q. In Long Beach? A. Yes, sir.

Q. And what were you going to do over there?

A. Oh, I was to be an assembler.

Q. Had you made arrangements with them as to what position you were to get?

A. Well, I had been over there the week before.

Q. What were those arrangements?

A. I was to start at fifty cents an hour, I believe. I believe it was five cents raise on the hour every month or six weeks.

Q. Prior to that time had you done any work for compensation, or had you—

A. (Interrupting): Well, not very large. I did a little laundry work and a little waitress work.

(Testimony of Zoa H. Zane.)

Q. Aside from that since you have been married, you just attended to your household duties and your children? [10] A. Yes, sir.

Q. Now, when did you finally leave for California?

A. On the evening of the tenth of December.

Q. Prior to that time had you purchased your ticket? A. Yes.

Q. At the Greyhound Bus Station?

A. Yes, sir.

Q. And you left Phoenix on the evening of the tenth about what time?

A. I think it was about 9:00 o'clock in the evening.

Q. On the Greyhound bus? A. Yes.

Q. And then you traveled all that night, did you? A. Yes, sir.

Q. And on the morning of the eleventh will you tell us what happened?

A. Well, it was, after we had left Indio on Highway 99 going towards Los Angeles, the bus pulled up behind a truck and the truck was meeting a car coming from the opposite direction and then I thought the bus was crawling up too close behind the truck, I was kind of braced, and just as the [11] car coming from the other direction passed the truck, the bus pulled out to go around the truck in front of it and it caught the front right-hand side of the bus, on the rear of the truck.

Q. As it ran into the truck and hit it from the

(Testimony of Zoa H. Zane.)

rear—hit the rear of the truck—it ran into the truck? A. Yes.

Q. Was the truck in front of the bus moving?

A. Yes.

Q. And was it moving slowly or rapidly?

A. Well, I think it was moving about an even rate of speed. It was not going fast.

Q. All right. When the bus collided with the rear of the truck, what happened then?

A. Well, I was thrown to the floor——

Q. (Interrupting): Wait a minute, where were you in the bus?

A. I was in the front seat, right front side of the aisle.

Q. Then what happened when the collision occurred?

A. I was—I had a hand-hold on the bar that goes from the floor to the ceiling, and I was either thrown through the windshield or the door, I don't know which, but when I got up on my foot [12] again I was on the pavement.

Q. What, if anything, happened to the front of the bus?

A. Well, I guess it was torn away. The front of it and a part of the windshield.

Q. You say you were thrown out of the bus?

A. Yes, I guess I was. My feet was on the ground when I got up on my feet.

Q. Did you have the child in your arms?

A. Yes.

Q. By the way, you took your child with you?

(Testimony of Zoa H. Zane.)

A. Yes.

Q. Which one was that, one of the young ones?

A. It was the baby, nine months old.

Q. The other child you left here?

A. No, he was already with my sister in California.

Q. You intended to leave this child with your sister, too? A. Yes.

Q. You had the child in your arms at the time this accident happened?

A. Well, it seemed to me I was trying to put him behind me.

Q. Well, now, when you were thrown out of the bus did you still have the child? [13]

A. He was lying in the floor by the seat and I picked him up and was holding him. I was balanced on my left hip. My right leg was numb.

Q. You say your right leg was numb. Did you try to bear any weight on it?

A. Yes, I tried to put it on the ground but there was no feeling in it.

Q. All right. What happened then?

A. Well, a lady got off the bus and picked the baby up for me and I stood there for a while and I believe it was a soldier who came by and I asked him if he would help me sit down and he noticed my foot was pretty badly torn up and they got me laying down and they put a tourniquet around my leg.

Q. On the pavement there?

A. Well, along the side of the road.

(Testimony of Zoa H. Zane.)

Q. And how long did you remain there?

A. Oh, not very long, just possibly thirty minutes.

Q. And then what was done after that?

A. Well, the ambulance from Indio came out and I was taken, I and the baby and the lady that had taken him.

Q. You say the ambulance from Indio came out?

A. Yes, sir. [14]

Q. You were put in the ambulance?

A. Yes.

Q. And where were you taken?

A. I was taken to the Coachella Valley Hospital in Indio.

Q. Coachella Valley Hospital? A. Yes.

Q. In Indio? A. Yes.

Q. Who went with you in the bus?

A. Well, the baby was with me and the lady that had taken him.

Q. Just the three of you? A. Yes.

Q. And when you arrived at the Coachella Valley Hospital—by the way, when you left there did you know where you were going?

A. No, I didn't.

Q. And you did arrive at the Coachella Valley Hospital? A. Yes.

Q. And then what was done after you arrived at the hospital?

A. I was taken in on a stretcher to the emergency operating room and signed the entrance sheet for myself and the baby. [15]

(Testimony of Zoa H. Zane.)

Q. You were taken to the emergency operating room? A. Yes.

Q. And then do you know what was done after that?

A. They started giving me hypos.

Q. Who gave you those?

A. The nurse on duty and then just a few moments at a time I was rational then for several hours.

Q. Well then, when did you first see a doctor?

A. Well, I came out from under the anesthetic for a while and the doctor I later learned was Dr. Blackman was telling me he had to amputate my leg, and I said something, "Let's get it over with," or something like that, and then there was some talk of a spinal anesthetic and in a little while I came to and they were sawing my leg off, and I asked them something about the spinal and they told me I was in too great a shock for a general anesthetic.

Q. Then after that where were you taken, after the operation?

A. I was wheeled into a private room by the two nurses.

Q. At the hospital there? [16] A. Yes.

Q. And were you under the influence of any anesthetic then?

A. Well, I had locals and they were partly worn off. I was rational then. They took me into the room. I saw it was empty and I made some comment about a private room and the nurse said, "You

(Testimony of Zoa H. Zane.)

have nothing to worry about it as the Greyhound will pay for this.”

Mr. Baker: We move to strike that part of the answer on the ground it is purely hearsay and irrelevant.

Mr. Carson: Your Honor, on that question we insist that it is very material. We insist that it is a part of the case and that under the decisions it is admissible, very much so.

The Court: Well, how could a nurse bind the Greyhound?

Mr. Carson: Well, Your Honor, on the order of proof that is very true, but here, I feel we will make the connection. I understand you have got to show agency in some way and you can only show it sometimes by circumstantial evidence, and we will avow that we will hook this up. Where there is a chain of circumstances, but this would be, I think—— [17]

The Court (Interrupting): Well, all right, go ahead then.

Mr. Baker: The only thing I'd like to say, if the Court please, I think that is an unjustified avowal. I know something about the case and we have never been able to hook up the nurse in this case. I have taken her deposition.

Mr. Carson: Well, that will be a question, I think, for the jury to determine.

The Court: Well, if it is not proper I will ask the jury to disregard it.

(Testimony of Zoa H. Zane.)

Mr. Stahl: Now, after that, when did you first see Dr. Blackman again?

A. Well, I don't know. It might have been the same day he was in. There was—I asked him about——

Q. (Interrupting): You say it might have been the same day? You think it was either the same day or the next day?

A. Yes, time didn't mean very much when you are pretty well doped up.

Q. And when you saw Dr. Blackman did you have a conversation with him?

A. Yes. I told him what the nurse told me and asked him if that was right and he said, "Yes, all you have to worry about is to get well." He [18] said, "You don't need to worry about the bills, that they will be taken care of."

Mr. Baker: We move to strike that evidence on the grounds previously assigned.

Mr. Stahl: Did he say he would take care of the bills?

Mr. Baker: Just a minute. Can I make an objection, Mr. Stahl?

Mr. Stahl: Yes.

Mr. Baker: We move to strike that answer, if the Court please, upon the grounds previously assigned, no showing of any agency between Dr. Blackman and Greyhound Lines.

Mr. Stahl: Well, I think she can testify, if the Court please, to the arrangements that were made for the payment of the bills in his own hospital. I

(Testimony of Zoa H. Zane.)

mean, she can testify. She was taken to this hospital without knowing anything about where she was being taken, anything of the kind—what was done there or not at her direction or anything of the kind. It is the chain of circumstances is all we possibly can prove.

The Court: Well, it may stand subject to the objections.

Mr. Stahl: You say that—state what was said.

Mr. Baker: She has already said it. I move [19] to strike it and the Court has allowed it to stand for the present.

Mr. Stahl: I don't know what she said. She said something or something of that kind. What was it she said?

A. I asked him about what the nurse had told me and he said, "Yes, that was right, and I didn't have anything to worry about, that the bills would be taken care of."

Q. Did he say by whom or anything of that kind?

A. Well, yes. He said the Greyhound would take care of it and he confirmed what the nurse had told me.

Q. Now, after that did you—how often did the doctor see you?

A. Oh, I'd say he was in every day for quite a while.

Q. And when, if at all, did you first meet a man by the name of Cameron?

A. Well, I think it was about three or four days

(Testimony of Zoa H. Zane.)

after I entered the hospital he first came into my room and the nurse introduced him to me as the Greyhound's claim agent, and he gave me a card to that effect.

Q. Gave you a card as the claim agent for the Greyhound? [20] A. Yes.

Q. And after that you saw him quite frequently?

A. Yes.

Q. Now, the first time he came in, was that after the amputation of your leg?

A. Well, I think the amputation was on a Friday and I think he came into Indio the next Tuesday.

Q. That would be about four days?

A. Yes.

Q. Did you have a conversation with Mr. Cameron?

A. Well, not much that day. He just told me——

Mr. Baker (Interrupting): Just a minute. You can answer that yes or no.

Mr. Stahl: What was the conversation you had with him that day or——

Mr. Baker (Interrupting): We object to it, if the Court pleases. No sufficient proof to show that Cameron is any agent for the Greyhound Lines. You can't prove agency out of the mouth of——

Mr. Carson (Interrupting): Mr. Baker, are you assuming that a claim agent walking into a place has no authority at all, and if you assume if that be

(Testimony of Zoa H. Zane.)

the rule you could not establish agency [21] any place in this earth.

Mr. Baker: Don't make a speech about it. All I have to say is what I have just said, that there is no proof of Cameron being the agent.

The Court: Well, they may be able to prove that. Go ahead.

Mr. Stahl: On the pleadings, if the Court please, we have——

The Court: I said you may proceed.

Mr. Stahl: Well, the first time you saw Mr. Cameron will you tell what the conversation was?

A. Well, he asked me if they were treating me all right, how I felt, and told me I didn't have anything to worry about, that he was representing the Greyhound and they were taking care of the bills.

Q. Was that the substance of your conversation on his first visit?

A. Yes, I think about the first time I saw him.

Q. And did you see him after that?

A. Yes, he was down quite frequent.

Q. Can you tell us about when the next time was?

A. Well, it was possibly a week later he came into the room.

Q. And do you recall any conversation you had [22] with him at that time?

Mr. Baker: Just to save time, may it be stipulated that the same objection be made to all this conversation and the same ruling?

Mr. Stahl: Yes. Will you read the question?

(Testimony of Zoa H. Zane.)

(The last question was read by the reporter.)

The Witness: Well, I was asking him about Dr. Blackman and he said that Dr. Blackman was a very good doctor and he had cause to know that Blackman was a very good doctor.

Q. And did he say anything else at that time?

A. Not that I recall.

Q. Did he say anything about as to whose doctor he was?

Mr. Baker: We object to that. That is definitely leading and suggestive, if the Court please.

Mr. Stahl: I guess that is leading. Did he say anything further or was that all at that time?

A. I was not feeling very well and he would just come in for a few moments.

Q. When did you see him again?

A. I saw him at least once a week, I think, all the time I was there.

Q. When was it that Mr. Cameron, if at all, first took up with you the matter of settlement of the case? [23]

A. Well, I think it was sometime in January that he really got in earnest about it. He had been hinting around about it for quite some time, telling me about other settlements. He was wanting me to make up my mind what I wanted.

Q. Well, during that time, those several weeks after the amputation, what treatment, if any, did you receive?

A. Well, just the dressing of my stump was all.

(Testimony of Zoa H. Zane.)

Q. What medicines, were you given any medicines?

A. Yes, I was. I had hypos quite a bit.

Q. How frequently?

A. Well, as soon as one would wear off they would give me another one.

Q. How long did that continue after that?

A. Well, until after the second operation.

Q. I see. You say you had a second operation?

A. Yes.

Q. What did that consist of?

A. Well, they sawed off some more of my leg and fixed a pad so as to enable me to wear an artificial limb.

Q. That operation was also below the knee?

A. Yes.

Q. How long after the first operation was the [24] second one?

A. Oh, I think it was something like six weeks.

Q. How long were you in the hospital altogether?

A. Almost three months.

Q. From the eleventh of December until——

A. (Interrupting): The eighth of March, 1943.

Q. And now, you say, that after Mr. Cameron had seen you several times he had discussed the matter of settlement?

A. Yes.

Q. Did he refer to a settlement? How did he take that up with you, in what way?

A. Well, he would tell me about the other cases he had settled, and like that, and he was—he

(Testimony of Zoa H. Zane.)

wanted me to make up my mind what I wanted, and I told him I would rather wait and see how I got along, and he assured me again that anything that Dr. Blackman told me I could rely on; he was a very good doctor and that he had handled cases for them and he knew he was a good doctor and he was their doctor, and said that any time that Dr. Blackman said I could settle and that I was all right, why, I could take his word for it.

Q. Now, did he, in talking to you, did he tell you about settlements he had made with other [25] people; how much he had paid? A. Yes.

Q. And did he want you to say what you would take for your injuries?

A. Yes, he did.

Q. And did you finally tell him?

A. Well, at first I told him I wanted \$50,000.00.

Q. What did he say about that?

A. He laughed and said, 'If I were Fred Astaire or Ginger Rogers, maybe I could expect a settlement like that,' but, he said, an injury like that was more or less temporary, that within a few months I would be able to wear an artificial limb and be up and doing the same things I did before.

Q. Tell us what happened after that.

A. Well, he said that the Head Office would not accept any such demand as that, and I asked him about \$25,000.00 then. He said he didn't know, he would have to see about it, so I told him I would not submit anything right then until we talked it over and it was, I guess, four or five weeks before

(Testimony of Zoa H. Zane.)

we ever came to an understanding about the settlement.

Q. And when you would name a figure he would tell you he would have to submit it? A. Yes.

Q. And then would you hear from him in any other way besides his visits to you?

Mr. Baker: What was that question?

Mr. Stahl: I asked her if she would hear from him in any other way.

Mr. Carson: Mr. Baker, if she heard from the claim agent in any other manner except personal visits.

Mr. Stahl: Did you have any further communication with him—strike that question. Did you have any other communications with Mr. Cameron other than the personal interviews that you had with him when he called on you?

A. Well, we were waiting——

Mr. Baker (Interrupting): Just a minute, you can answer that yes or no. A. Yes.

Mr. Stahl: And what were they?

A. Well, sometimes it was by telephone and once he sent a wire.

Q. And that was in reference to what the company would do, or what? A. Well, yes.

Q. Well now, when was it—did he 'phone directly to you?

A. No, he would 'phone the nurses at the hospital [27] and they would deliver his message.

Q. When he wired you, that was sent to you at the hospital? A. Yes.

(Testimony of Zoa H. Zane.)

Q. Do you recall what that wire was——

Mr. Baker (Interrupting): Just a minute——

Mr. Stahl (Interrupting): By the way, do you have that wire? A. No, I have not.

Q. Do you recall what it was?

A. Well, it was after I told him that I would settle for \$15,000.00.

Q. Excuse me, you finally advised him that you would settle for \$15,000.00?

A. Yes. Then he wired back that they would allow me \$14,500.00, and \$500.00 for the baby's injuries.

Q. Oh, I see. The baby had received some injuries in the accident?

A. Some minor burns.

Q. Then after that when did you see him?

A. Oh, I think he called later and asked the nurse what I had made my mind up about and she told him that I would accept it, and in a day or so, why, he came down and left a release for my husband and I to sign. [28]

Q. With whom did he leave that?

A. With me.

Q. And was your husband there at the time?

A. No, he was in Las Vegas, Nevada.

Q. By the way, when did your husband first—— when did you first see him after this accident?

A. I think it was a week after I was admitted to the hospital.

Q. And where did you see him, there at the hospital? A. Yes, he came to the hospital.

(Testimony of Zoa H. Zane.)

Q. And then was he there continuously from that time?

A. Well, he worked part time there and part time in Las Vegas.

Q. That is, he worked part time in Indio and part time——

A. (Interrupting): Yes.

Q. And he came to the hospital frequently, did he? A. Yes.

Q. And at this particular time when Mr. Cameron came down after the wire, you say your husband was not there at the time?

A. No, he was in Las Vegas.

Q. And what Mr. Cameron left with you was a [29] form of release?

A. Yes, it was all ready to be signed and released.

Q. And what were his instructions to you about that?

A. He told me that in case my husband did come in some time when he was not—Mr. Cameron was not in Indio, for us to go for a Notary Public and sign in front of him.

Q. I see, and then did your husband return?

A. Yes.

Q. When he got back did you ever sign that release? A. I think I signed it, yes.

Q. When did your husband come back?

A. Oh, it was, I think he came back to Indio the 19th of February.

(Testimony of Zoa H. Zane.)

Q. Well, did he return before Mr. Cameron came back again?

A. Yes, I think he did, but it was the same day. I don't remember which one got to the hospital first.

Q. Well, was that release signed before Mr. Cameron returned? A. No.

Q. You don't have that release that was left [30] with you at that time, or do you have it?

Mr. Baker: Just a minute, that is leading and suggestive.

Mr. Stahl: Will you state whether or not you have the paper that was left with you by Mr. Cameron?

A. No, he took it with him after we signed it.

Q. Well, now, will you tell us—do you recall in that paper that he left with you what consideration was stated, the amount?

Mr. Baker: Oh, we object to that, if the Court please, not the best evidence. The release speaks for itself.

The Court: He took it with him.

Mr. Baker: How was that?

The Court: The witness says that Cameron took the release with him. You may answer.

Mr. Stahl: Do you recall the amount?

A. Just set forth \$14,500.00 and it described my injuries.

Q. Do you recall what it said as to the injuries?

A. Yes, it said the loss of my right foot and lower leg.

(Testimony of Zoa H. Zane.)

Q. I see. Now, when Mr. Cameron came, he came there on the nineteenth, did he? [31]

A. Yes, I believe so.

Q. And was your husband there at that time or did he come? A. Yes.

Q. And up to that time you had signed nothing, is that correct? A. That is right.

Q. Then after Mr. Cameron came what did he say?

A. Oh, he came into the room to see if my husband had come back, and he went up to the office to figure up the doctor bills and the hospital bills, and when he came back, why, he handed us a release to sign, and I was under the impression it was the same one that I had in the room, he had taken it before.

Q. Well, what was his attitude about the matter when he came back there on the nineteenth?

A. Oh, he was in a hurry to get the deal closed and said he was apt to get in trouble with the Head Office; he had fooled around the case so much; he would have to make settlement; Dr. Blackman said I was to be released from the hospital and there wasn't any reason for me not to sign it.

Q. And then you say he took it and said he was going to the office? [32] A. Yes.

Q. And did he return to your room then?

A. Yes.

Q. And who was there when he returned?

A. Well, he brought the head nurse back with him, Miss Markham, who witnessed the release.

(Testimony of Zoa H. Zane.)

Q. And then what was done; did you sign the paper there then? A. Yes, we signed it.

Q. And your husband signed it also, did he?

A. Yes.

Q. And you thought that you were signing the paper that he left with you before, you signed this paper?

A. Yes. I, of course, thought that was the one we were signing.

The Court: It's 12:00 o'clock. We will suspend until 2:00. Keep in mind the Court's admonition, Mrs. Cameron. Be back in your place at 2:00 o'clock.

Thereupon a recess was taken at 12:00 o'clock noon.

2:00 o'clock P. M., after recess, all parties as noted on the Clerk's Record being present, the trial resumed as follows: [33]

Zoa H. Zane resumed the witness stand and testified further as follows:

Direct Examination (Resumed)

Mr. Stahl:

Q. Mrs. Zane, will you state whether or not when you were taken to the Coachella Valley Hospital you made any arrangements there for your care and treatment?

A. No, sir; I didn't.

Q. And did you at any time after that?

(Testimony of Zoa H. Zane.)

A. No, sir.

Q. Until after the settlement, I say, up to the time of the settlement you made no arrangements.

A. Yes, I made the settlement and arrangements to stay a few weeks longer.

Q. After that you did? A. Yes.

Q. Will you state whether or not you were presented with any bills from the hospital for doctors or hospital? A. No, sir.

Q. Now, Mrs. Zane, do you know whether any other patients were in the hospital at the time you were from those injuries in this accident?

A. There was one gentleman in the same accident I was. He was there for a few days, and then there [34] were others—from other wrecks there in there at a time or two while I was there.

Q. Now, I believe you stated that from some talk with Mr. Cameron—did you ever have any talks with Mr. Cameron and Dr. Blackman regarding an artificial limb?

A. Yes, I did talk to both of them about it.

Q. About when was that?

A. Well, it was probably the last part of January.

Q. And that was prior to the settlement?

A. Yes.

Q. And will you state what was said at that time, what the conversation was?

Mr. Baker: The same objection we have heretofore made on conversations with either Dr. Blackman and Mr. Cameron.

(Testimony of Zoa H. Zane.)

The Court: You may answer.

(The question was read by the reporter.)

The Witness: Well, they were both in the room together at one time.

Mr. Stahl: That was in your room?

A. Yes, sir; and then they were telling of the people they knew that had artificial limbs, and they both told me that as soon as I was up and had my strength back I would be able to wear an [35] artificial limb and be as good as new, and the only injuries I had was the amputation of my right foot, lower leg.

Q. And do you recall that they had anything with them regarding artificial limbs at that time, or was that later?

A. I think the doctor brought back in one when he was alone, had a pamphlet.

Q. When was that?

A. Well, I think it was even—it was before Mr. Cameron and the doctor were in the room together.

Q. What did he have with him then?

A. He had a pamphlet showing a party who had had an artificial limb high jumping, and he was advertising some brace company that made artificial limbs.

Q. Showing these people using artificial limbs?

A. Yes. He said I would be able to do the same as soon as I was up and could wear an artificial limb.

Q. Now, did you—prior to that time did you

(Testimony of Zoa H. Zane.)

have any talks with Dr. Blackman regarding the extent of your injuries?

A. Oh, yes, several times I asked him about [36] my injuries and he always assured me that that was all that was the matter with me, was just the amputation of my right foot and lower leg and a fractured left ankle, which was minor.

Q. Well, now, on those occasions did you suffer any pain?

A. Yes, I did suffer pain in my knee and right leg, but when I asked the doctor about it he said it was probably the reaction from the amputation.

Q. While you were in the hospital there were no X-rays taken of any part of your body?

A. No, just one that I know of and that was the one below the knee on the right and that was when they thought there was an infection setting up.

Q. Where was that?

A. That was in the stump below the knee on my right side.

Q. That was the only X-ray they took, was of that lower leg, is that right? A. Yes, sir.

Q. Now, when Mr. Cameron, after he had left the form of release with you and then came back on the nineteenth of February, what was your talk with him then regarding the amount, or did you have a talk with him regarding the amount? [37]

A. Well, when he came back for the release, why, we made our minds we would sign it, and then he said that was a very good settlement for this loss

(Testimony of Zoa H. Zane.)

and probably I would not have got as much if I had a lawyer and went to court.

Q. Did you ever discuss that with Dr. Blackman? A. The settlement?

Q. Yes.

A. Yes, and he said he thought that was a very good settlement for just the loss of my foot.

Q. Did you ever have an attorney represent you while you were at the hospital? A. No.

Q. Did you ever discuss the matter of an attorney with Mr. Cameron?

A. Yes, but he said that probably we would get a better settlement if we just dealt with him personally.

Q. Will you state what your condition was while you were in the hospital and up to the time of this settlement.

A. Well, I was bed-fast most all the time.

Q. How was that?

A. I say, I was bed-fast, be in the wheel chair maybe a few minutes a day, and I was very [38] weak and nervous. I was having sleeping powders at night.

Q. Up to the time of this settlement until after that time, will you state whether or not you had any knowledge at all as to any injury to your femur or thigh bone?

A. No, I had none. The doctor assured me many times that all that was the matter with me was just the amputation.

(Testimony of Zoa H. Zane.)

Q. And did you ever discuss that with Mr. Cameron?

A. Yes. He said that the doctor had assured him, too, that that was all that was the matter with me, was just the amputation of my foot and leg.

Q. And will you state why you believed that that was the only—your only injury was the lower foot and lower leg—right foot.

Mr. Baker: We object to that, that is calling for a conclusion of the witness, if the Court please.

Mr. Stahl: I think the Answer will show—

The Court (Interrupting): Why she believed it?

Mr. Stahl: Yes, on what ground did she believe it? [39]

The Court: Well, go ahead.

The Witness: Well, the doctor assured me many times that that was all that was the matter with me.

Mr. Stahl: And did you—will you state whether or not you believed the statements of Mr. Cameron and the doctor?

A. Why, yes, I relied on what they told me.

Q. You relied upon them, did you, in making the settlement? A. Yes, sir.

Q. And had you known that there was an injury to your thigh and femur and thigh-bone so that you could not use an artificial limb, would you have made a settlement?

A. No, I don't think I would have.

Q. Well, do you know whether you would or not? A. No, I would not.

Q. During the course of these negotiations about

(Testimony of Zoa H. Zane.)

the settlement, will you state whether or not anything was said regarding doctors' or hospital bills?

Mr. Baker: I think that is repetition, if the Court please. It has been gone over time after time.

The Court: No, not that. She may answer. [40]

The Witness: There was no mention made to me of hospital or doctor bills.

Mr. Stahl: During those negotiations, I mean during the progress of the negotiations.

A. Yes.

Q. When was anything said—I believe you have testified to that. A. Well, not until——

Q. (Interrupting): I mean, before that.

A. Well, I don't believe I understood the question.

Q. Was there anything said about this shortly after you entered the hospital? A. No.

Q. As to who was to pay them?

A. Yes, they told me the Greyhound would pay them.

Q. You recall, Mrs. Zane, of having overheard a conversation between Mr. Cameron and Dr. Blackman regarding the hospital and doctor's charges?

A. Yes, I heard them.

Q. About when was that?

A. Well, I don't know. It was some time after the second operation, I think.

Q. Was it before or after your settlement?

A. Oh, it was after. [41]

Q. How is that? A. It was before.

(Testimony of Zoa H. Zane.)

Q. Before your settlement?

A. Before the settlement.

Q. But you think shortly after your second operation?

A. Yes.

Q. And do you know where they were when you heard them talking?

A. No. They were in the hall or in a room down the hall.

Q. And the door of your room, was it closed?

A. It was open.

Q. Will you relate what that conversation was?

Mr. Baker: We object to that, if the Court please. This is a conversation between Dr. Blackman and Mr. Cameron, do I understand it?

Mr. Carson: Well, it is, counsel——

The Court (Interrupting): Let counsel finish.

Mr. Baker: We object on the ground it would not be binding upon this defendant in any manner or form.

The Court: You may answer. Go ahead and state what you heard.

A. It was concerning my bills, the bills I had made there, and Dr. Blackman agreed to accept [42] a thousand dollars for all hospital and doctor bills on my account.

Mr. Stahl: Who said that?

A. What?

Q. Whose talk are you relating, I don't understand.

A. I said, from what I heard, Dr. Blackman

(Testimony of Zoa H. Zane.)

had agreed to accept a thousand dollars for my hospital and doctor bills.

Q. Who said that? A. Mr. Cameron.

Q. I see.

A. And the doctor told him that my condition was—I was so weak for such a long time they had to postpone the second operation for quite a while, that therefore it would run up a bigger hospital and doctor bills than he first thought and he couldn't settle for no thousand dollars, and later Cameron came into the room and told me that Dr. Blackman had agreed to take care of me for a thousand dollars and now he changed his mind about it.

Q. Do you recall anything else that Mr. Cameron said?

A. Well, he made some mention of getting in trouble with the Head Office.

Q. Did Dr. Blackman ever mention the matter [43] of that conversation with you?

A. Well, after Mr. Cameron left, why, he also came into the room and was telling me that Cameron was wanting him to take a thousand dollars, but that he could not on account of he said he didn't know how much the hospital and doctor bills were, anyway, and he was sure they were more than that.

Q. Now, Mrs. Zane, upon this settlement being made, how much did you receive?

A. \$14,500.00.

Q. And then from that time after the settlement was made, would you state who took care of—how long did you remain at the hospital after that?

(Testimony of Zoa H. Zane.)

A. For about three weeks after the settlement.

Q. And who took care of the hospital and doctor bills after the settlement?

A. I did after the settlement.

Q. And do you recall how much that was?

A. It was one hundred and forty some dollars. I don't remember just how much.

Q. Now, when was it, Mrs. Zane, that you had anything to do with an artificial limb; that is, what was done in that connection?

A. Well, that was even before I signed the release, Dr. Blackman had wrote or telephoned Los Angeles and they sent an agent out and measured me [44] up with an artificial limb, and after the settlement was made, why, in a week or two, why, he brought it out to fit.

Q. Brought the artificial limb down to the hospital at Coachella for a fitting? A. Yes.

Q. Then what?

A. Well, I tried to use it but it was too short. He had to take it back and lengthen it and he said it was—the agent from the brace shop did state he thought there must be something the matter with my hip and asked if I had had it X-rayed. I told him I didn't know, that I didn't think there were any, and he advised me to talk to Dr. Blackman about it.

Q. How long was that after the nineteenth of February, after the settlement was made?

A. I think that was in March. It was just a few days before I left the hospital.

(Testimony of Zoa H. Zane.)

Q. A few days before you left?

A. A few. I don't remember just how many.

Q. And then did he return, take the artificial limb back with him?

A. Yes, he took it back and he told me, he said, "If the doctor has already released you, you just as well go on home and," he said, "we [45] will mail it to you," so, therefore, I was back in Phoenix before I got the limb.

Q. How was that?

A. I say, I was back in Phoenix when I got the limb.

Q. They sent it to you here? A. Yes.

Q. Then what did you do with it after you received it here?

A. Well, I started trying to use it and began wearing it as soon as I got it.

Q. But you mentioned something about the man who brought it down to the hospital in Indio suggested you talk to Dr. Blackman about it.

A. Yes.

Q. Did you do that?

A. Yes, I did, and he told me there wasn't anything the matter with my hip, that I was just lazy and if I would get up and exercise a little I would get to where I could use it.

Q. Did this man that came down take any measurements of your leg?

A. He measured my left leg.

Q. Then do you know the results of that measurement?

(Testimony of Zoa H. Zane.)

A. Oh, he just took the measurements. [46]

Q. He just took the measurement of your left leg?

A. Yes, he took the measurement of my left leg to get the length of the right one for the artificial one.

Q. Oh, I see. Well, do you know what the result of those measurements were?

A. Well, they were about two inches too short, the artificial limb was that they brought out.

Q. Well, then, when you received the limb here in Phoenix, what did you do with it?

A. I began trying to use it.

Q. By yourself, out at your home?

A. Yes, but I could never put any weight on it.

Q. Then what did you do?

A. Well, I thought it was still too short, so I went to this Arizona Brace Shop here in town and they thought it was too short, too, and were going to rebuild it for me.

Q. The Arizona Brace Shop? A. Yes.

Q. And did they do that?

A. Well, they started to——

Mr. Baker (Interrupting): Just a minute, we object to this. Get the Arizona Brace Shop [47] record.

Mr. Carson: Well, Your Honor, except in this way, it shows the condition of the leg and we have got to show it, Your Honor, why she went and had it X-rayed; why she came to find out that the

(Testimony of Zoa H. Zane.)

hip was fractured. I think we have the right to show it.

The Court: Can't you just show that she had the X-ray? We have been over these various ramifications for a long time. If she had to have an X-ray you can introduce the testimony on it.

Mr. Stahl: After you had gone to the Arizona Brace Shop, what did you do after that? I might ask you this: As a result of going there, did you use the artificial limb?

A. Well, I could never put any weight on it.

Q. What did you do then?

A. The manager there suggested that I have some X-rays made.

Mr. Baker: We move to strike it.

Mr. Stahl: Don't say what the manager said, what did you have done?

The Court: The objection is sustained.

The Witness: I had some X-rays.

Mr. Stahl: You had some X-rays by whom?

A. At the Pathological Laboratory. [48]

Q. What did you do then?

A. They were sent to Dr. Ryerson.

Q. Dr. Ryerson. Who is he?

A. He is my family doctor and his office is on McDowell Road.

Q. And then after that, after he had read the X-rays, where did you go?

A. Well, he advised me to go to Dr. Lytton-Smith.

Q. To Dr. Lytton-Smith here in Phoenix?

(Testimony of Zoa H. Zane.)

A. Yes.

Q. Out at the Grunow Clinic?? A. Yes.

Q. And you went to Dr. Smith, did you?

A. Yes.

Q. And what did Dr. Smith do?

A. Oh, he had me go to the Good Samaritan Hospital and there my leg was put in traction and later a bone graft was fit on my hip joint.

Q. On your hip joint? A. Yes, sir.

Q. Have you ever been able to use the artificial limb?

A. No, the bone graft collapsed right after the cast was taken off.

Q. Now, Mrs. Zane, from the time of this [49] accident until the present time, have you had any other accidents? A. No.

Q. Have you had any falls or any injuries at all?

A. No, sir. Oh, I fell once after the first X-rays were taken.

Q. That was after you had seen Dr. Lytton-Smith?

A. Yes, that was even after the operation a long time.

Q. After Lytton-Smith's operation?

A. Yes.

Q. Now, I believe you stated you paid the hospital for care and treatment after the settlement of \$140.90, is that correct? A. Yes.

Q. Do you have those receipts?

Mr. Baker: Why don't you mark them for

(Testimony of Zoa H. Zane.)

identification and then I can tell better if they are to be admitted into evidence?

Mr. Stahl: All right. I might have this one marked here.

(The document was marked as plaintiffs' Exhibit 1 for identification.)

Mr. Stahl: Mrs. Zane, I will hand you [50] plaintiff's Exhibit 1 for identification and ask you when and where you received that paper?

A. Well, while I was in the hospital there at Coachella Valley, Mr. Cameron, the claim agent, handed it to me after we signed the release.

Mr. Baker: What was that?

(The answer of the witness was read by the reporter.)

Mr. Baker: Do I understand you to say that Mr. Cameron handed you this receipt?

The Witness: Yes.

Mr. Baker: I don't have any objection.

Mr. Stahl: I offer it in evidence.

(The document was received as plaintiffs' Exhibit 1 in evidence.)

PLAINTIFFS' EXHIBIT No. 1

COACHELLA VALLEY HOSPITAL

330 Miles Avenue

Indio (Phone 2741) Calif.

Receipt

Date Feb. 19, 1943 708

Received From Pacific Greyhound Lines

One thousand four hundred and sixty-seven Dollars (\$1,467.00).

(Testimony of Zoa H. Zane.)

For Hospitalization and Dr.'s care of Mrs. Zoa Zane, from Dec. 11th, '42, to Feb. 19, '43.

(How Paid) Check. (Balance Due):

COACHELLA VALLEY
HOSPITAL.

By A. R. MARCUM.

(Thereupon the document was read to the jury.)

Mr. Stahl: Mark this.

(A document was marked as plaintiffs' Exhibit 2 for identification.)

Mr. Stahl: Do you have any objection to this?

Mr. Baker: Why don't you qualify it? I don't know what it is for.

Mr. Stahl: I hand you plaintiffs' Exhibit #2 for identification, Mrs. Zane, and ask you what that is.

A. That was the hospital and doctor that I [51] paid at Indio.

Mr. Baker: No objection.

(This document was received and marked as plaintiffs' Exhibit Number 2 in evidence.)

(Testimony of Zoa H. Zane.)

PLAINTIFFS' EXHIBIT No. 2

90-1347 Indio Branch 90-1347

No. 3

Bank of America
National Trust & Savings Association

Indio, Calif., Mar. 7, 1943.

Pay to the Order of Coachella Valley Hospital
\$140.90 one hundred and forty and 90/100 Dollars.

ZOA ZANE.

[Stamped on Back]: Pay to the Order of the
First National Bank in Coachella, Coachella, Calif.
For Deposit Only. Coachella Valley Hospital, W. H.
Blackman, Ralph E. Pawley, Raymond O'Connell.

Pay to the Order of Any Bank or Banker. Prior
Endorsements Guaranteed. H 9 1943 90-767. The
First National Bank, Coachella, Calif.

Mr. Stahl: This, gentlemen, is simply a check on
the Bank of America for \$140.90, payable to the
order of the Coachella Valley Hospital and signed
by Zoa Zane.

Q. Now, Mrs. Zane, in connection with your—
the injury to your thigh, will you state what doctor
bills, if any, you have incurred since you came
back to Phoenix. I am just speaking solely now
about your thigh-bone or hip.

(Testimony of Zoa H. Zane.)

Mr. Baker: That is not proof of the reasonable value.

Mr. Stahl: Well, we will probably have to connect that up.

Mr. Carson: What she incurred. We will have the doctor testify what took place. You got to make some showing that a bill was incurred.

The Court: Go ahead.

A. There was \$200.00 to Dr. Lytton-Smith for the operation and then there was, I think, a hospital bill of \$185.00 and X-rays.

Mr. Stahl: Did you have any other medical expenses from that operation? [52]

A. Yes. I went to Los Angeles last summer to see Dr. Wilson, and I think it took about \$300.00 to go over and wait around to get an appointment with him——

Mr. Baker (Interrupting): Just a minute. I think I ought to object to that, where she went to Los Angeles to see Dr. Wilson. Unless there is some showing that there was a necessity for it—she wasn't satisfied with Dr. Lytton-Smith.

Mr. Carson: Dr. Lytton-Smith sent her over there.

Mr. Stahl: Under whose instructions and suggestions did you see Dr. Wilson at Los Angeles?

A. Dr. Lytton-Smith suggested I go over there and see Dr. Wilson.

Q. Was that after——

Mr. Baker (Interrupting): I still object to that, if the Court please.

(Testimony of Zoa H. Zane.)

The Court: It may stand.

Mr. Stahl: Was that after Dr. Lytton-Smith's operation? A. Yes, that was afterwards.

Q. Now, have you been required, Mrs. Zane, to employ help at your home on account of having to use the crutches?

A. Yes, I have. I spent three months in [53] bed and that took quite a bit of money to get somebody to stay then, and ever since then, why I had part-time help anyway.

Q. Do you know how much that amounted to?

A. Well, probably around \$700.00.

Q. Do you know what the X-rays in connection with your thigh and hip injury cost you?

A. No, I couldn't say right off-hand. I guess it was about a hundred dollars, I guess, or maybe more——

Mr. Baker (Interrupting): Just a minute. We move to strike that.

Mr. Stahl: It may be stricken.

The Court: It may be stricken.

Mr. Stahl: Would you be able to say how much it was as a minimum amount; was it at least so much or not?

A. Yes, I imagine it would be about a hundred dollars.

Mr. Stahl: It is not what you imagine. Can you ascertain this and let us know?

Mr. Baker: There is a proper way for doing that, if the Court please.

The Court: Well the objection is sustained.

(Testimony of Zoa H. Zane.)

Mr. Stahl: Mrs. Zane, since you left the hospital in Los Angeles, will you state whether [54] you had had any pain in your upper leg?

A. You mean, in Indio?

Q. After you left Indio, yes.

A. Yes, I had pains before and I still—my hip still bothers me, my hip and knee.

Q. You have had ever since you returned to Phoenix? A. Yes, sir.

Q. What is the nature of those pains?

A. Well, they are just pains. I may have my leg a certain way, why, it is quite painful, and usually at night it bothers me more than during the day.

Q. And have you been able to get around except on crutches? A. No.

Q. Will you state in what other ways besides not being able to work or get around without crutches, in what other way has this bothered you, if at all?

A. Well, I can't be a mother to my children such as I should be, or a wife either to my husband.

Q. Are you able to perform your household work?

A. A part of it, not all. The heavier work I am unable to do. [55]

Q. Now, you said about not being able to be a wife to your husband. What do you mean by that?

A. Well, regular relations between man and wife.

Q. You have not been able to do that since this accident?

(Testimony of Zoa H. Zane.)

A. Well, we tried it but it was just too painful to me.

Q. Have you had any children since the accident? A. No.

Q. After you made this settlement, I believe you said up to the time you made the settlement you were in a private room? A. Yes, sir.

Q. And after the settlement was made, where did you stay, at the hospital?

A. Yes, I suggested I be moved into a ward.

Q. And were you moved into a ward?

A. Yes.

Q. You stayed there for the remainder of your time? A. Yes.

Q. When was the first time, Mrs. Zane, that you knew you had an injury to your thigh-bone and hip and you would be unable to wear an artificial limb? [56]

A. It was in August, 1943, when I had the X-rays made at the Pathological, and that was the first time that I knew it.

Q. This money that you received, Mrs. Zane, I believe you alleged in your complaint about, or what you did with the money, \$14,500.00. What did you use that for?

Mr. Baker: Just a minute. I object to that. I am going to cross-examine her. That, certainly, is not direct.

Mr. Stahl: We alleged in our complaint in reference to tender.

The Court: There would have to be some limit

(Testimony of Zoa H. Zane.)

to that. We are not particularly interested in every cent of money she spent.

Mr. Stahl: I don't know that we will go into detail. In general, what did you do with the money you received? I don't care for the details of it.

A. Well, we bought a home and we are settled in it, and the hospital and doctors' bills and household help.

Q. And this was done before you knew about the injury to your thigh?

A. Yes, we bought a home before this.

Q. And these other expenses that you paid out?

A. Yes.

Mr. Stahl: I believe that is all.

Cross Examination

Mr. Baker:

Q. This accident occurred about December 10th or 11th, was it? A. December 11th.

Q. The morning of December 11th, was it not?

A. Yes.

Q. And in the vicinity of Indio, California?

A. Yes, sir.

Q. Which side of Indio, on the Los Angeles side or the Phoenix side? A. Los Angeles.

Q. How far from Indio did the accident occur?

A. I think it was about seventeen miles from Indio.

Q. About seventeen miles from Indio?

A. I think so.

Q. And I believe you testified that you were thrown out of the bus, were you? A. Yes.

(Testimony of Zoa H. Zane.)

Q. And then some soldier helped you, picked you up or something?

A. Well, he helped me to lay down and they [58] put a tourniquet on my leg.

Q. How many other persons were injured in that same accident, passengers?

A. There were two killed.

Q. How is that?

A. There were two killed.

Q. Some killed? A. Yes.

Q. And a large number injured, were they not?

A. No, I don't think there was such a great number.

Q. Would you say there were eighteen or twenty of them injured? A. No.

Q. There were several injured, were they not?

A. Five or six, possibly.

Q. Five or six, that is all you know about?

A. Yes.

Q. You see Mr. Parks right over there who sits on my right? A. Yes.

Q. You did see him at Indio?

A. Not that I remember of.

Q. Now, how were you taken from the scene of the accident to Indio, to the hospital? [59]

A. By ambulance.

Q. And what ambulance was that, do you know?

A. No, I don't.

Q. They were Army ambulances, weren't they, or do you know?

A. The one I was taken in was not.

(Testimony of Zoa H. Zane.)

Q. What kind was it, do you know?

A. It was from a mortuary funeral home.

Q. Do you know whether some Army ambulances were there taking the injured to the hospitals.

A. I don't know.

Q. That, you don't remember?

A. No.

Q. And you were taken to the hospital in a mortuary ambulance, is that right?

A. Yes.

Q. And you were taken to the Coachella Valley Hospital?

A. Yes.

Q. Coachella. Is there another hospital there in Indio?

A. Yes, I believe there is.

Q. Some of the patients were taken to the other hospital, were they not?

A. I think so.

Q. That is, some of the passengers that were [60] injured in this bus accident were taken to the other hospital there at Indio?

A. Yes.

Q. And some went to the same hospital that you did?

A. Yes.

Q. Now, after you arrived at the hospital, who was the first person you contacted, if you remember?

A. You mean, in the hospital who was the first person I saw?

Q. Yes, in the hospital.

A. Was a nurse.

Q. And did you have your child with you at that time?

A. Yes.

Q. And you took your child also to the hospital?

A. Yes.

Q. The child suffered a few minor injuries of some sort?

A. Yes.

(Testimony of Zoa H. Zane.)

Q. Did he not? A. Yes.

Q. Nothing serious?

A. No, there was nothing serious. [61]

Q. Well, how long after you were in the hospital did you determine the seriousness of your injuries or the extent of your injuries?

A. Well, in a very short time they told me they were going to amputate my leg and foot.

Q. How long would you say?

A. I don't know.

Q. After you arrived?

A. It was some time that morning that I was taken in.

Q. Well, did they amputate your leg within an hour after you arrived at the hospital?

A. I don't know whether it was within an hour or two.

Q. It was very soon after you arrived, anyway, was it not? A. Yes.

Q. You were told that your fracture of the lower leg was such that they had to amputate immediately, that was true, wasn't it? A. Yes.

Q. It was just mashed to pieces, your leg below your knee?

A. I don't know, I didn't see it.

Q. They had to act very quickly? A. Yes.

Q. And very promptly in order to save your life, didn't they? A. Yes, I guess they did.

Q. Now, I believe you stated at the time—strike that, I will re-frame the question. You stated that an X-ray was taken at the Indio hospital?

(Testimony of Zoa H. Zane.)

A. Yes.

Q. Before the time that your leg was amputated?

A. I don't know what they did before they amputated. I don't think there were any X-rays taken.

Q. Oh, well, you spoke about an X-ray being taken. Where was that taken, do you know?

A. That was after my stump had been fixed up.

Q. Oh. So you don't know whether an X-ray was taken before the amputation or not?

A. No, I do not.

Q. Now, after your leg was amputated, you stated that a subsequent operation was performed upon your leg, is that true?

A. Yes, there was a second operation on my leg.

Q. Now, when was that second operation?

A. I think it was about six weeks after the [63] first.

Q. About six weeks after the first operation, and what was the necessity for that second operation, Mrs. Zane?

A. Well, that was to enable me to wear an artificial limb. They took some more bone out and fixed a pad at the end of my leg for protection when I was fitted up with an artificial.

Q. So, first your leg below your knee was amputated and then six weeks later an operation was performed on the same leg for the purpose of suit-

(Testimony of Zoa H. Zane.)

ing for an artificial limb, is that right; that was the purpose of it? A. Yes.

Q. Who performed both of those operations?

A. Dr. Blackman.

Q. Both the amputation and the second operation? A. Yes.

Q. And did he advise you—did he tell you that the second operation was to make your leg suitable for an artificial limb? A. Yes.

Q. He is the one that told you? Now, before that time, had he—had you had these conversations concerning who was going to pay these bills that [64] you referred to, the Pacific Greyhound Lines to pay these bills? A. Yes.

Q. In other words, you have testified about some conversations that you had with Dr. Blackman, I believe, and Mr. Cameron, in which I believe the inference was given to you that the Pacific Greyhound Lines was going to pay all of these medical bills and the cost of this operation, is that right?

A. Yes.

Q. And you were so advised before this second operation that we are talking about, is that right?

A. Why, certainly.

Q. Now, Mrs. Zane, after your amputation had been effected and completed, describe what pains you suffered in your right leg.

A. Well, there was more like the muscles jerking, kind of a spasmodic pain of the muscles and there was all up in my right leg.

(Testimony of Zoa H. Zane.)

Q. And did you suffer pains continuously during all that time in that right leg?

A. Well, yes, every day. A whole lot depended on the position I was in, and any movement caused pain.

Q. Where was that pain, in your knee?

A. There was all in my leg. It hurt so bad [65] I don't know where it hurt.

Mr. Baker: What was that answer?

(The answer was read by the reporter.)

Mr. Baker: It hurt so bad you didn't know where it hurt? A. Yes.

Q. You say the pain was that extreme and so severe you could not determine the exact locality of it, is that correct? A. Yes.

Q. And that was continuously up until the time of your second operation, is that right?

A. Well, it still hurts like that at times.

Q. Well, you might answer my question and we will get to those various times as we go along.

Mr. Carson: Well, she has answered the question as best she can. He has just asked a question where he assumed a state of facts that didn't exist. She has a right to answer.

The Court: He asked her if it was that way up until the time of the second operation. You may answer the question. A. Yes, it did.

Mr. Baker: How about after the second operation, did that extreme pain continue A. Yes.

Q. Up until the time you left the hospital?

A. Yes.

(Testimony of Zoa H. Zane.)

Q. Continuously?

A. No, I don't say continuously. I say, most any moment, and I said a whole lot of it depended on the position I was in.

Q. You suffered great discomfort all the time?

A. Yes.

Q. When did you first see Mr. Cameron?

A. It was about three or four days after I was admitted to the hospital in Indio.

Q. How did you come to meet him? Somebody bring him in and introduce you, or what?

A. Yes, the nurse brought him in and introduced him as an agent from the Greyhound, and he also gave me a card that had Mr. Cameron, his name on it, and it said, "Claims Agent," or something of that sort.

Q. Greyhound Lines?

A. Yes, Pacific Greyhound Lines.

Q. So he handed you a card?

A. Yes, sir.

Q. And he was introduced to you, is that right?

A. Yes. [67]

Q. And did he tell you what his purpose was for meeting you?

A. Well, not at that time he didn't.

Q. What did he say; what was the first conversation you ever had with Mr. Cameron? What did it amount to? Nothing but an introduction, wasn't it, that is what I am getting at.

A. Yes, more or less it was just an introduction. He asked how I was getting along.

(Testimony of Zoa H. Zane.)

Q. He was solicitous of your welfare, was he not, Mrs. Zane? A. Yes, he was.

Q. Very solicitous, that is correct, isn't it?

A. Yes.

Q. I believe he stated that he wanted to see that you were well taken care of? A. Yes.

Q. And I believe you testified before that he also said he was taking care of the passengers that were injured in that wreck, did he not, trying to, anyway? A. I beg your pardon?

Q. I think you testified in your examination in chief, as I recall it, that he told you that he was taking care of all the passengers that were [68] injured in that wreck.

Mr. Carson: I don't think that is in the record at all.

Mr. Baker: Something to that effect.

The Court: I don't remember it.

Mr. Carson: I don't remember it. I don't think it is in evidence at all, except put in evidence by Mr. Baker.

The Witness: I don't remember.

Mr. Baker: Well, do you know whether or not he was visiting the other patients there who had been injured in that same wreck?

Mr. Carson: When do you mean?

Mr. Baker: I don't know when.

The Witness: You mean the first time?

Mr. Baker: I was not there, Mr. Carson.

Mr. Carson: Well, will you describe the time, Mr. Baker?

(Testimony of Zoa H. Zane.)

The Court: Well, at the time she was there.

Mr. Carson: I understand——

The Witness (Interrupting): Do you mean, the first time he came that he told me that?

Mr. Baker: Well, do you know whether or not he visited the other patients? A. Yes.

Q. You knew that, didn't you? [69]

A. I knew what?

Q. That Mr. Cameron visited the other people there. A. Yes.

Q. You knew that, didn't you? A. Yes.

Q. Well, when was the next time you saw Mr. Cameron?

A. Oh, it was probably within a week.

Q. The hospital again? A. Yes.

Q. And at that second time he called upon you, was he also calling upon the other people there?

A. I don't know.

Q. You don't know that? A. No.

Q. Well, on this second visit by Mr. Cameron, what was the conversation?

A. Well, the first time or two he came, why, he just was friendly.

Q. Just friendly?

A. Yes, and he assured me there was nothing to worry about, that they were taking care of all the bills. All I had to do was to get well.

Q. Again he was friendly and solicitous of [70] your welfare? A. Yes.

Q. That was the second time he called on you. Now, the third time he called upon you?

(Testimony of Zoa H. Zane.)

A. I can't enumerate the times he came. He was there quite often.

Q. Would you say it was still another week farther on, another week later?

A. Probably so. There at first, why, his visits were about a week apart.

Q. And during those first three or four visits, did he urge you to accept any settlement for your injuries?

A. Oh, he didn't urge me, no, but he was kind of preparing his ground.

Q. Well, now, what did he say? Did he ask you to name a figure, or did he name any figure to you, we will say, the first three times he visited you?

A. Well, he told me about the cases he had settled and about the two people that lost their lives and how much was settled on them. He said they settled ten thousand on each of them.

Q. He never asked you to name a figure at all at first, did he?

A. No, not at first. [71]

Q. And he never made any offer to you, did he?

A. Well, I told him I would not want ten thousand dollars.

Q. Well, I mean, he never made an offer of any kind?

A. No.

Q. I am saying the first three times he called on you?

A. No.

Q. When was the first time there was any discussion of a settlement with you to compensate you for your injuries?

(Testimony of Zoa H. Zane.)

A. Well, I think it was right after the second operation that——

Q. (Interrupting): Right after the second operation? A. Yes.

Q. That would be a matter of about six weeks before Mr. Cameron ever attempted to settle this case with you, that is a fact, is it?

A. Yes, I guess it is.

Q. But you felt assured that you were going to be compensated, did you not, Mrs. Zane?

A. Oh, yes.

Q. There was no question about that at all [72] was there, any time? A. No, there wasn't.

Q. None whatever but what the Greyhound Lines were going to compensate you for the injuries, there never was a question about that in the world, was there? A. No.

Mr. Carson: He has asked that question two or three times.

Mr. Baker: So you say the first conversation was about six weeks right after the second operation that you identify as six weeks after you went into the hospital. What was said in that time with reference to compensating you for your injuries by Mr. Cameron?

A. He asked me how much I'd settle for and I told him \$50,000.00.

Q. That offer, of course, was refused?

A. Yes.

Q. Well, when did you have the next conversation concerning settlement?

(Testimony of Zoa H. Zane.)

A. Oh, I don't know.

Q. We refer now to this \$50,000.00 conversation. When was your next settlement for \$50,000.00 conversation?

A. When I told him that, why, he told me [72-A] right off.

Q. I am asking you when was the next conversation after the \$50,000.00 conversation?

A. Oh, it was within a week anyway.

Q. About a week? A. Within a week.

Q. Did you see Mr. Cameron then?

A. Yes.

Q. Did you have a conversation with him?

A. Yes, I suppose so.

Q. What was that conversation at that time?

A. Well, first I had asked him about twenty-five thousand and he had asked the head office about it, I guess, anyway he came back and said they would not settle for anything like that, and he offered me twelve thousand, I think it was, or twelve thousand five hundred, and I told him that—I don't know whether it was at that time or not that I told him I couldn't take it, or I would have to talk it over with my husband or something.

Q. Well, did you talk it over with your husband? A. Yes, I suppose so.

Q. You had seen your husband quite often before that? A. Oh, yes. [73]

Q. He was frequently in Indio? A. Yes.

Q. And he visited you every time he was in Indio, did he not? A. Yes.

(Testimony of Zoa H. Zane.)

Q. All questions of settlement you discussed with your husband, did you not, Mrs. Zane?

A. Yes.

Q. He was fully advised of all negotiations, was he not? A. Yes.

Q. All right. Now, you say you arrived to the point where an offer of \$12,000.00 was made by Mr. Cameron, is that right? A. Yes.

Q. Now, what was the next conversation—what was the next development in that respect?

A. Well, he started coming back so often then that I could not enumerate the times or tell what conversations we had.

Q. Well, I think you said in some place in your examination that finally you agreed to accept fifteen thousand, did you not? A. Yes.

Q. Did you send him a telegram to that effect to Los Angeles? [74]

A. Yes, I guess I did, since you mention it.

Mr. Baker: Mark this for identification, please.

(The document was marked as Defendant's Exhibit A for identification.)

Mr. Baker: I am handing you Defendant's Exhibit A for identification, Mrs. Zane, and will ask you if you sent that telegram to Mr. Cameron?

A. (Looking over document): Yes, I did.

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was received as defendant's Exhibit A in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT A

[Western Union Telegram]

ZUB6 8 Collect XC—Indio Calif 731P Jan 29—
Wm. Cameron—C382 36 85 1943 Jan 29 PM 10 01
621 S Hope St LosA—Rf

Will Settle for 15000 Plus Hospital Expense—Mrs
Zoa Zane.

15000....

Mr. Baker: I will read this to you, gentlemen.

(Thereupon Defendant's Exhibit A in evidence was read to the jury by Mr. Baker.)

Mr. Baker: Now, how long after that was it before this settlement was finally effected?

A. Well, it was—we signed the release on the 19th of February.

Q. Three weeks after that, wasn't it?

A. Yes.

Q. Three weeks after you sent the telegram of January 29 telling him that you would take \$15,000.00, plus hospital expenses in settlement? [75]

A. Yes.

Q. And the settlement was made and that is exactly what was paid to you, wasn't it, Mrs. Zane, \$15,000.00 plus your hospital expenses?

A. No.

Q. You were paid \$14,500.00 and \$500.00 for your child, weren't you?

A. Yes.

(Testimony of Zoa H. Zane.)

Q. And your hospital expenses, that is a fact, isn't it; that is exactly what you were paid, isn't that true, Mrs. Zane? A. Yes.

Q. In other words, the settlement was effected exactly according to your own request, was it not?

A. It looks like it, yes.

Q. How long would you say you discussed this matter with your husband before you finally effected the settlement?

A. Well, I discussed it with him before I sent the wire, and maybe——

Q. (Interrupting): You discussed it with him before you sent that telegram, did you?

A. Yes, and immediately after that he left town.

Q. I mean, you had discussed the matter with him before you sent that telegram? [76]

A. Yes.

Q. And he approved of your sending that telegram, did he not?

A. Yes, he said it was up to me.

Q. Now, between January 29 and February 19, did you see Mr. Cameron again? A. Yes.

Q. You did? A. Yes.

Q. For what purpose?

A. He would come to Indio to see—well, at first he fixed the release up and brought it down and Jack was out of town, so he left it.

Q. When did he leave this so-called release you are talking about?

A. Well, I don't know just when.

(Testimony of Zoa H. Zane.)

Q. Could you approximate the date—let's take the date of that telegram?

A. It was probably within three days anyway after that.

Q. Now, you say that he left the release with you? A. Yes.

Q. It was all made out? A. Yes.

Q. Was it on a printed form? [77]

A. Yes.

Q. Did you sign that?

A. I was led to believe I signed the one that he——

Q. (Interrupting): Well, did you sign that?

A. I signed a release, yes.

Q. You signed a release? A. Yes.

Q. Did you sign the one he left with you?

A. No.

Q. You did not? A. No, I didn't.

Q. What became of that?

A. That is what I'd like to know.

Q. You say he left it with you, did he?

A. Yes.

Q. What became of it?

A. He took it back with him.

Q. What?

A. He took it back the day we signed the releases.

Q. He took it? A. Yes.

Q. The day you signed the release, is that right?

A. We signed the release.

(Testimony of Zoa H. Zane.)

Mr. Baker: Mark this for identification, [78] please.

(The document was marked as Defendant's Exhibit B for identification.)

Mr. Baker: Handing you Defendant's Exhibit B for identification, Mrs. Zane, I will ask you if that is your signature?

A. (Looking over document): Yes.

Q. Is that the signature of your husband, Jack Zane? A. It looks like it.

Q. At the time this was executed was it witnessed by anybody? A. Yes.

Q. By whom? A. Mrs. Markham.

Q. And by who else?

A. Mr. Cameron.

Q. Is that their signatures attached thereto?

A. I wouldn't know.

Q. Weren't they signed in your presence?

A. Yes.

Q. They were signed in your presence and those signatures were appended in your presence, were they not? A. Yes.

Mr. Baker: We offer it in evidence. [79]

Mr. Carson: We would like to look at it.

Mr. Baker: Yes, sir.

The Court: Any objection?

Mr. Carson: No, with this exception, that subject to our claim that it is not the release she had in her possession over in Los Angeles.

The Court: We are interested in this one now. May be received.

(Testimony of Zoa H. Zane.)

(Document was received as Defendant's Exhibit B in evidence.)

DEFENDANT'S EXHIBIT B

RELEASE IN FULL

IPGL-2251-B

Received of Pacific Greyhound Lines the sum of Fifteen thousand nine hundred sixty-seven and 00/100 Dollars (\$15,967.00) in consideration of which sum we hereby release and discharge Pacific Greyhound Lines of and from any and all claims and demands which we now have or may hereafter have, on account of or arising out of an accident which occurred on or about the 11 day of December, 1942, at Point on U. S. Highway # 99, near Indio, California, resulting in personal injury and property damage.

It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.

It is further understood and agreed that the payment of said sum is not, and is not to be construed as, an admission on the part of said payors of any liability whatsoever in consequence of said accident.

(Testimony of Zoa H. Zane.)

Dated at Indio, Calif., this 19 day of February, 1943.

ZOA ZANE (L. S.)

JACK ZANE (L. S.)

M. CAMERON,

Witness.

ALPHA R. MARCUM,

Witness.

This release should not be signed unless read by or read to the person signing same.

State of

County of—ss.

On the day of,
19...., before me personally appeared.....
..... to me
known and known to me to be the same person men-
tioned and described in and who executed the above
instrument and.....acknowledged to me
that.....executed the same.

.....

Notary Public.

Section 1542 of the Civil Code referred to in the above release reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor.”

Form 71008C 15M 1041 (S&C)

(Testimony of Zoa H. Zane.)

Mr. Baker: I will read Defendant's Exhibit B.

(Thereupon Defendant's Exhibit B in evidence was read to the jury.)

Mr. Baker. Mrs. Markham was the nurse there, was she not; one of the nurses at the hospital?

A. Yes.

Q. And Mr. Cameron, the gentleman you have been speaking about, effected the settlement with you, is that correct? A. Yes.

Q. How long was Mr. Cameron with you on this day, February 19, before you finally executed this release?

A. Oh, I don't know. He came down and wanted to know if we were ready to sign the release [80] or if we had already signed it, and which we had not, and he said, 'Well, he would go out and figure out the hospital and doctor bills', and then he and Mrs. Markham came back into the room.

Q. Your husband was there all that time, was he? A. Yes.

Q. Did you discuss the terms of the release before it was signed on that day, that particular day? A. Yes.

Q. It was discussed between you, is that right?

A. Yes, we discussed it.

Q. In the presence of your husband?

A. Yes.

Q. And Mr. Cameron?

A. I don't know about Mr. Cameron.

(Testimony of Zoa H. Zane.)

Q. Well, your husband was there?

A. Yes.

Q. I believe you stated that you had consulted no attorney in the matter? A. No.

Q. Therefore, you didn't have to pay any attorney's fees, did you? A. Yes, that is right.

Q. Whatever you received was absolutely clear and clean, is that right? A. Yes.

Q. How did Mr. Cameron pay you the sum of \$15,000.00? A. By check.

Q. \$15,900.00? A. He didn't pay me that.

Q. He didn't pay you?

A. He paid me fourteen thousand, five hundred.

Q. He paid you fourteen thousand, five hundred? A. Yes, by check.

Mr. Baker: Mark this for identification, please.

(The document was marked as Defendant's Exhibit C for identification.)

Mr. Baker: I hand you Defendant's Exhibit C for identification and ask you if that is the voucher for fourteen thousand, five hundred which was paid you on that date? A. Yes, this is it.

Q. Is that your signature, Zoa Zane?

A. Yes.

Q. Also the endorsement, is that your signature, Zoa Zane? A. Yes. [82]

Q. You signed it twice? A. Yes.

Q. Your husband signed it twice, Jack Zane, and also the Coachella Hospital signed it, didn't they? A. Yes.

(Testimony of Zoa H. Zane.)

Q. All three of you; that is, you, your husband and the hospital, all three signed that voucher, didn't they, for \$14,500.00. Is that correct?

A. Yes.

Mr. Baker: We offer it.

Mr. Stahl: No objection.

(The document was received as Defendant's Exhibit C in evidence.)

(Thereupon Defendant's Exhibit C in evidence was read to the jury by Mr. Baker.)

DEFENDANT'S EXHIBIT C

Read Carefully

If blank spaces in Receipt and Release below are filled in Signatures must be affixed by all Payees before draft will be honored.

RECEIPT AND RELEASE

In Consideration of the sum of Fourteen thousand five hundred and no/100 Dollars, the receipt of which is hereby acknowledged, the undersigned does hereby release and discharge Pacific Greyhound Lines and/or of and from any and all claims and demands which the undersigned now has or may hereafter have on account of or arising out of an accident which occurred on or about the 11 day of December, 1942, at or near the city of Indio, in state of California. It is hereby expressly agreed and understood that the payment of said sum is not, and is not to be construed as, an

(Testimony of Zoa H. Zane.)

admission on the part of said payor of any liability whatsoever in consequence of said accident.

Dated this.....day of....., 194...

ZOA ZANE

JACK ZANE

Payee Signature

COACHELLA VALLEY HOSPITAL

By W. H. BLACKMAN, M.D.

Payee Signature

[In margin]:

ENDORSEMENT

If blank spaces in Receipt and Release are filled in, the signatures to same must correspond with this endorsement or draft will not be honored.

ZOA ZANE

JACK ZANE

COACHELLA VALLEY HOSPITAL

By W. H. BLACKMAN, M.D.

(Do not detach receipt and release.)

PACIFIC GREYHOUND LINES

For the Account of.....

No. 14079

Claim Settlement Draft

Second Final

Los Angeles, Cal., February 19, 1943

Pay to the order of Zoa Zane and Jack Zane her husband and Coachella Valley Hospital \$14,500#
Fourteen thousand five hundred and no/100 Dollars

(Testimony of Zoa H. Zane.)

Kind of Loss: Bus. Occurring on December 11, 1942, at or near Indio, California.

In full settlement of any and all claims as result of above mentioned accident. Claim No. IPGL-2251-B.

WESTERN ADJUSTING BUREAU

Approved:

W. M. CAMERON

To Treasurer Pacific Greyhound Lines

Payable Thru

Bank of America

National Trust and Savings Association

11-34 San Francisco, Calif. 11-34

[Stamped]: May 11, 1943 19090

This draft will not be honored if detached from receipt and release.

[On back of Receipt and Release]

Endorsement:

Jack Zane

Ident.

Dr. Blackman

[Stamped]: Pay to the Order of Any Bank, Banker or Trust Company. All prior endorsements guaranteed. 90-1347 Feb 27 1943 90-1347 Indio, Calif. 916 Bank of America 916. Indio, Calif.

(Testimony of Zoa H. Zane.)

[Stamped]: City Collections, S. F. Central Office, No. 1, Mar. 3, 1943, 550 Montgomery St., Bank of America N. T. & S. A.

Mr. Baker: Mark this for identification, please.

(The document was marked as Defendant's Exhibit D for identification.)

Mr. Baker: What did you do with the voucher, that is, Defendant's Exhibit D in evidence, which the jurors are now examining?

A. I endorsed it and sent it to the bank at Indio. [83]

Q. When did you send it to the bank in Indio, do you know?

A. No, but it was a few days after I had got it, I think.

Q. You held it a few days, you think?

A. I think so.

Q. You didn't send it down right away?

A. No, I don't believe so.

Q. Who took it down?

A. My husband did.

Q. And did you get cash on it or did you deposit the check?

A. I got a cashier's check, I believe, or something of that sort, and I——

Q. (Interrupting) Well, you realized the cash either by an account in the bank or a cashier's check, or some other means, did you not?

(Testimony of Zoa H. Zane.)

A. Yes.

Q. You realized that \$14,500.00. Now, I hand you Defendant's Exhibit D marked for identification, Mrs. Zane, and ask you to examine the same, please. (Handing document to witness.) You recognize that, do you? A. Yes.

Q. The signatures purporting to be the signatures of Zoa Zane on that instrument are your [84] signatures? A. Yes.

Q. The signatures purporting to be the signatures of Jack Zane are the signatures of your husband, are they not? A. Yes.

Q. And that is true of the endorsement, and Dr. Blackman also endorsed that, too, didn't he?

A. I don't know. We endorsed it and turned it over to them.

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was received as Defendant's Exhibit D in evidence.)

DEFENDANT'S EXHIBIT D

Read Carefully

If blank spaces in Receipt and Release below are filled in, signatures must be affixed by all Payees before draft will be honored.

RECEIPT AND RELEASE

In Consideration of the sum of One thousand four hundred sixty-seven and no/100 Dollars, the receipt of which is hereby acknowledged, the un-

(Testimony of Zoa H. Zane.)

undersigned does hereby release and discharge Pacific Greyhound Lines and/or.....of any from any and all claims and demands which the undersigned now has or may hereafter have on account of arising out of an accident which occurred on or about the 11 day of December, 1942, at or near the city of Indio, in state of California. It is hereby expressly agreed and understood that the payment of said sum is not, and is not to be construed as, an admission on the part of said payor of any liability whatsoever in consequence of said accident.

Dated this.....day of....., 194...

ZOA ZANE

JACK ZANE

Payee Signature

COACHELLA VALLEY HOSPITAL

By W. H. BLACKMAN, M.D.

[Stamped on face]: Pay to the order of the First National Bank in Coachella, Coachella, Calif., for deposit only Coachella Valley Hospital, W. H. Blackman, Ralph E. Pawley, Raymond O'Connell.

(Do not detach receipt and release.)

[In margin]:

ENDORSEMENT

If blank spaces in Receipt and Release are filled in, the signatures to same must correspond with endorsement or draft will not be honored.

ZOA ZANE

JACK ZANE

(Testimony of Zoa H. Zane.)

COACHELLA VALLEY HOSPITAL
By W. H. BLACKMAN, M.D.

PACIFIC GREYHOUND LINES

For the Account of..... No. 14078

First Partial

Claim Settlement Draft

Los Angeles, Cal., February 19, 1943

Pay to the Order of Jack Zane and Zoa Zane,
husband and wife and Coachella Valley Hospital
and Dr. W. H. Blackman \$1467# One thousand
four hundred sixty-seven and no/100# Dollars.

Kind of Loss: Bus, occurring on December 11,
1942, at or near Indio, California, in full settlement
of Hospital and medical bills for Zoa Zane to and
including 2/19/43. Claim No. IPGL-2251-B.

WESTERN ADJUSTING BUREAU

Approved

W. M. CAMERON

[Stamped]: May 11, 1943.

To Treasurer Pacific Greyhound Lines

Payable thru

Bank of America

National Trust and Savings Association

11-34 San Francisco, Calif. 11-34

This draft will not be honored if detached from
Receipt and Release.

(Testimony of Zoa H. Zane.)

(Thereupon Defendant's Exhibit D was read to the jury by Mr. Baker.)

Mr. Baker: That paper which is Defendant's Exhibit D which I just handed to the jury to examine, Mrs. Zane, was that the amount of the hospital and medical expenses up to the date of settlement, was it not? A. Yes.

Q. What was done with that voucher after you signed it—I will withdraw that. Was this voucher delivered to you at the same time as the first voucher for fourteen thousand, five hundred? [85]

A. Yes.

Q. Both vouchers were delivered to you at the same time, is that correct? A. Yes.

Q. What did you do with the second voucher—I will refer to it as the second voucher, which is Defendant's Exhibit D, am I right?

The Clerk: "D" is right.

The Witness: We endorsed it and turned it over to Mrs. Markham.

Mr. Baker: Turned it over to the hospital?

A. Yes.

Q. Endorsed it first and turned it over to the hospital? A. Yes.

Q. Do you know what became of it after that?

A. No.

The Court: We will have our afternoon recess. Keep in mind the Court's admonition.

Thereupon a short recess was taken.

After recess, all parties as heretofore noted being present, the trial resumed as follows:

Mr. Carson: In view of the situation, Mr. Baker, I believe we will ask that Dr. Lytton-Smith be called.

The Clerk: Dr. Lytton-Smith, will you come [86] up and be sworn, please.

DR. JAMES LYTTON-SMITH

was called as a witness on behalf of the Plaintiffs, and being first duly sworn testified as follows:

Direct Examination

Mr. Carson:

Q. Doctor, will you state your name, please?

A. James Lytton-Smith.

Q. What is your occupation?

A. Orthopedic surgeon.

Q. How long have you practiced——

Mr. Baker (Interruptiong): We will admit the qualifications of Doctor Lytton-Smith as an orthopedic surgeon.

Mr. Carson: All right, then. You are a member of the American College of Surgery, are you not?

A. Yes, sir.

Q. Doctor Lytton-Smith, do you know Mrs. Zane, the plaintiff? A. Yes.

Q. Do you remember about when you first met her?

A. About the 27th of September, 1943.

(Testimony of Dr. James Lytton-Smith.)

Q. Do you remember the occasion of how you [87] came to meet her?

A. She was referred to me for examination by Dr. Ryerson.

Q. And what was done then, Doctor, do you know, or did you get some X-rays at that time?

A. As I recall it, Dr. Ryerson had taken X-rays and she had X-rays with her.

Q. Do you know what those X-rays show?

Mr. Baker: Just a minute, we object to that, if the Court please, not the best evidence.

Mr. Carson: Well, your Honor, we sent some of those X-rays, they were sent over to Dr. Wilson in Los Angeles and we found out they are not here. We tried to locate them and don't know where they are, the first ones that were taken, and I don't know——

Mr. Baker (Interrupting): That is not an excuse. Duplicates could be made, I suppose.

Mr. Carson: If duplicates could be made of X-rays, I don't know it. Can duplicates be made of X-ray plates?

The Witness: Yes.

Q. Doctor, what was her condition when you first—when she first came to you?

A. She had, aside from the amputation which had been performed, she had a fracture of the neck [88] of the right femur.

Mr. Carson: Doctor, I will show you a couple of X-rays here—may those be marked for identification?

(Testimony of Dr. James Lytton-Smith.)

(Thereupon the documents were marked as Plaintiffs' Exhibit 3 and Plaintiffs' Exhibit 4 for identification.)

Mr. Carson: Doctor, will you explain what the right femur is, or what you found?

A. Well, the femur is the thigh-bone. The head of the femur rotates in the hip joint, or what we call the acetabulum. There are two common types of fracture in the upper portion of the femur. One is the intraperiosteal type, which always keeps solid because it always has a good supply of blood. The other is the neck of the femur which occurs inside of the capsule of the joint, and in this particular fracture there is a large percentage of disability even with the best treatment, because the blood supply sometimes does not establish over and across into this ball portion of the head. Now, if that does not re-establish the blood supply, the bone absorbs and a union does not occur. Then the shaft rides upwards and it plays freely without any joint. In other words, the weight would then be borne by the [89] muscles that are attached to the trochanter, and this was the type of fracture she had in the neck of the femur.

Q. Now, can you describe this hip-joint up here, how it fits in or what is the contour of it?

A. Can I use a blackboard?

Mr. Carson: Yes, the blackboard.

A. (The witness illustrates on blackboard.) Roughly, this is the side of the pelvis and this is

(Testimony of Dr. James Lytton-Smith.)

the joint surface and this is the head of the femur. Here is where the fracture occurred.

Mr. Baker: On Plaintiffs' Exhibits 3 and 4, which are X-ray pictures, by stipulation with Mr. Carson, I agreed with him that I would not compel the presence of the Navy doctors in San Diego who identified the taking, as you express it, of these photographs. The only thing, my stipulation is limited to this, that I admit that these X-ray photographs were taken by the United States Navy Hospital at San Diego on May 13th, 1944.

Mr. Carson: And they are of Zoa Zane?

Mr. Baker: And they are of Zoa Zane.

Mr. Carson: With that stipulation they can be admitted for whatever they are worth.

Mr. Baker: Whatever they are worth. Wait a minute, I am not admitting as to the authenticity. [90] I am admitting that they were taken at the Naval Hospital on May 13th, 1944.

Mr. Carson: Doctor, here are two X-ray pictures I think you have seen before. Those are the photographs, the X-ray pictures of Zoa Zane's femur, the thigh-bone, are they not?

A. They look identically like the ones I have seen of her.

Q. Now, what does that show, Doctor, those photographs?

Mr. Baker: Just a minute, I object to it. These photographs were taken after the testimony that the operation was performed on Mrs. Zane.

Mr. Carson: That is very true, we admit that.

(Testimony of Dr. James Lytton-Smith.)

Mr. Baker: Those were not taken until May 13th, 1944.

Mr. Carson: Do they show the fracture——

Mr. Baker (Interrupting): Just a minute. I have made my objection, if the Court please.

The Court: He may answer and you can cross examine.

Mr. Carson: All right. What do they show, Doctor?

A. They show a fracture of the neck of the femur with re-absorption, and in reference to this it appears that bone graft has been attempted. [91]

Q. What did you do in your attempt to cure this thing, if you will tell, please?

A. When we have a fracture of this type of long standing, one that has been present for some time, there are several procedures which we can attempt to carry out. One of them is the insertion of a bone graft through here, from the trochanter over into the head. If this graft becomes violent or lives, then it will establish a blood supply for the head, and when it establishes a blood supply for the head, we can expect a union to occur here.

That was the procedure that we attempted on Mrs. Zane. Before we did that, however, this portion was riding high; that is, the shaft was riding high, so it was necessary to put a pin through her femur, the lower portion of the thigh, and pull it with weights to bring this down into an alignment with the head; that is, the shaft with the head. Then we took the graft from the leg, from the

(Testimony of Dr. James Lytton-Smith.)

tibia and put the graft up into the head of the femur.

Now, we know that the graft didn't take, it was an unsuccessful operation. Bone graft is not always successful, and unfortunately this was one of the unsuccessful cases. We had also thought of [92] the possibility of shifting this shaft, cutting it through here, and shifting it over here to produce a large amount of callous so there would be some weight-bearing on this if this should stay violent or alive. We thought that that procedure would more likely fail than this one, and we selected the latter.

This procedure would not work now, in my opinion, because the head has become so absorbed that there would not be a possibility of establishing a union even by shifting the shaft over. We then had considered other procedures, such as taking this portion out and throwing it away and bringing this trochanter over; taking the muscles off here and transplanting them down here and putting this over into the socket and put in a vitallium socket on here. In doing that (weight could be borne, that sometimes are non-painful and with fairly good function. The reason that we have not done that is because I am very doubtful if a patient could walk with a re-constructed hip like that in the presence of an artificial extremity. Not only was there an artificial extremity to deal with, but there is also a flexion contraction of the knee, so I think

(Testimony of Dr. James Lytton-Smith.)

with the three things that it would be an impossible situation to re-construct. [93]

There was still one other procedure which Dr. Wilson suggested in Los Angeles, where we sent her for consultation because I didn't have any more ideas what to do for her, and that was to put this over here and to fuse it and make a head in the pelvis which would give weight-bearing, but Dr. Wilson agreed that he didn't know whether she could use an artificial extremity if she had a fused hip, and I don't know whether she could or not, and I doubt it, so if she will still have to use crutches there wouldn't be much reason to fuse the hip.

Q. Doctor, do you think that she will be able to get around at all, or do you know of any remedy that could cure that condition so she could use an artificial limb?

A. The only suggestion I know of is the possible fusion of the hip.

Q. What do you think of her chance of doing that?

Mr. Baker: Oh, he has already testified to that, if the Court please.

Mr. Carson: Well, that would be rather problematical, would it not?

A. I wouldn't think there would be a very good chance. [94]

Q. Now, Doctor, from your observation of this case and the study of it, did she relate where she received her injury? A. Yes.

(Testimony of Dr. James Lytton-Smith.)

Q. What did she give as the cause, Doctor?

Mr. Baker: Well, I think I will object to that, if the Court please. The history has no place here, because she has already testified about her history. Pure hearsay under the conditions.

Mr. Carson: Then, Mr. Baker, if the doctor doesn't get the history of the case, didn't get the history of the case, and didn't diagnose it——

Mr. Baker (Interrupting): She has already testified as to the history.

The Court: Oh, we know that. She probably told the doctor the same thing.

Mr. Carson: I understand. How did she relate she received this injury, Doctor?

Mr. Baker: I think I will object to that, too, if the Court please. It is purely hearsay.

The Court: That would be hearsay.

Mr. Carson: Doctor, what is your opinion as to when this injury occurred and how it occurred?

Mr. Baker: May I ask some questions on voir dire, Doctor, before you answer that? [95]

Mr. Carson: Yes, you may.

Mr. Baker: Could you possibly answer that question without an examination of the X-rays that were made by Dr. Ryerson?

A. As to how long it occurred before those X-rays were taken?

Q. Could you possibly do that without the X-rays themselves?

Mr. Carson: Well, he saw the X-rays.

(Testimony of Dr. James Lytton-Smith.)

A. I studied the X-rays and went over them very carefully.

Mr. Baker: I know, but the X-rays are not here.

A. I——

Q. (Interrupting) Wait a minute—just a minute. You would have to confine all of your testimony to those X-rays, wouldn't you, in answering this question that he has propounded to you now?

A. I would have to base my answer on the opinion I established while studying those X-rays.

Mr. Baker: That is correct. We object, if the Court please, to the question, upon the ground that he is not qualified and it is not the best evidence. The X-rays are not before us. I can't cross examine on X-rays that are not here. [96]

Mr. Carson: You Honor, I didn't know until today that the X-rays were not here.

The Court: That is always the rule.

Mr. Carson: Listen. Certainly, if he saw the X-rays he can base an opinion on what he found at the time.

The Court: That is all right, but this may have been prepared by some other person.

Mr. Baker: Why, certainly.

Mr. Carson: Were the X-rays brought to you, Doctor?

A. Yes.

The Court: Oh, well, you can't get away from that. You can probably get the pictures of this. You can do this in an orderly way.

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: I inquired about that and I was informed I could not get them.

The Court: That does not change the rule.

Mr. Carson: Doctor, assuming these facts to be true, this hypothetical question: Assuming she was injured on December 11, 1942, in Indio, California, where her hip or her leg was amputated—in a very severe accident. Assuming that she was taken to the hospital and this amputation took place. Assuming the fact that while in the hospital the operation—her leg was amputated [97] below the knee, and assuming the facts that after she came home she suffered pain, was unable to wear an artificial limb; went to Dr. Ryerson where X-rays were taken, and assuming that no other injury occurred, what would be your opinion as to whether or not—where she received this injury.

Mr. Baker: Just a minute. If the Court please, I object on the ground that the hypothetical question calls for a conclusion of the witness; does not state all of the facts proved in evidence and fails to recite the facts which had been proved in evidence. It does not cover by any means the situation as exists from her testimony today or at this moment.

Mr. Carson: Well, Your Honor, I think the hypothetical question assumes enough facts for him to answer the question. Mr. Baker can cross examine on any portion he does not like.

The Court: You finally asked whether he could tell where she received the injury. He could not

(Testimony of Dr. James Lytton-Smith.)

possibly tell that. He might tell, if he knew all the facts, how long the injury had been in existence, but he could not tell where she received the injury.

Mr. Carson: I will admit that. Doctor, [98] assuming the facts as related, how long would you state that the injury occurred or how long a space of time?

Mr. Baker: Just a minute. If the Court please, that is a little bit unintelligent. Will you read the question.

The Court: We can save a lot of time this evening when we adjourn to write out a hypothetical question and call the doctor. We will be on this all afternoon.

Mr. Baker: He can go get those X-rays.

Mr. Carson: Doctor, do you know how long it would take to make a duplicate of those X-rays, if duplicates can be made?

A. If you can find the originals you can get duplicates.

Q. If you don't find the originals, can you make a duplicate? A. No.

Mr. Carson: That is the point I am making.

Mr. Baker: There is no proof they were lost up until now. Now, they are justifiably lost.

Mr. Carson: Your Honor, could we have a recess for about fifteen minutes? I want to see if I can find out about this injury. [99]

The Court: We will adjourn presently and you can have until tomorrow morning at 10 o'clock.

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: Doctor, how long was she in the Good Samaritan Hospital, do you know?

A. According to my records she was admitted on September 28, 1943, and she was discharged on October 20, 1943.

Q. How long a period of time was that?

A. Approximately four weeks.

Q. What medical treatment did you give her while she was in the Good Samaritan?

A. I placed a scalpal traction on the right femur, about sixteen pounds and then did the bone graft I described.

Q. Doctor, you did see the original X-rays, did you not? A. Yes.

Q. Taken. Now——

A. (Interrupting) No, I didn't see them taken. I saw the X-rays.

Q. You saw the X-rays. Doctor Lytton-Smith, will you tell the Court and Jury here just how this condition of having her hip fractured disables Mrs. Zane, if it does disable her?

A. Yes, I think I explained it.

Q. Will she ever—in your opinion, will she [100] ever be able to walk again or get around any more than she is now?

Mr. Baker: If the Court please, that is perfectly obvious that the lady is not able to walk.

The Court: I can't hear your objection.

Mr. Baker: I say, it is perfectly obvious, unfortunately, that the lady won't be able to walk without crutches.

(Testimony of Dr. James Lytton-Smith.)

The Court: Yes, I am afraid that is so.

Mr. Carson: I think, Doctor, you have testified that she won't be able to use an artificial limb?

A. I don't think she can.

Q. Doctor, assuming that she didn't have a fractured hip, she could use an artificial limb you would say, would you not?

A. Oh, yes.

Q. Now, Doctor, when an artificial limb, a limb is fitted to a person, are they generally successful in getting around when they are fitted under modern conditions?

A. That, of course, depends on the type of amputation, the site of the amputation, the skill in applying the cross thesis, but as a general rule they are very successful. [101]

Q. As applied to her case, if she didn't have this injury to her hip, what would you say about wearing an artificial limb?

A. Oh, yes, she could wear an artificial limb.

Q. Doctor, do you know whether or not, from your examination of Mrs. Zane, she suffers any pain at the present time or physical discomfort as a result of this fractured hip?

A. I have not examined her recently, but she did complain of pain and I am certain that she probably does have pain.

Q. What does your examination show of that?

A. What is that?

Q. What does your examination show as to pain?

Mr. Baker: I will object to that. Doctor, I

(Testimony of Dr. James Lytton-Smith.)

will ask you one question on voir dire. The only time you know if they suffer pain is what the patient says?

A. That is right.

Mr. Baker: So, we object, if the Court please. The lady has been on the stand.

Mr. Carson: Well now, Doctor, naturally a fractured hip would be painful, would it not?

Mr. Baker: Well, we object to that on the [102] ground that without even suggesting it we know it to be true.

Mr. Carson: That is very true. We will have to try and get hold of those X-rays and recall Dr. Lytton-Smith.

Q. Do you remember what your expenses and your doctor bill was, Doctor?

A. No, I do not.

Q. You don't remember. You don't know what the hospital bill was. You would have to find that out from the Grunow Clinic.

A. I would have to call my bookkeeper. I don't have any idea.

Mr. Carson: Well, we will have to recall Dr. Smith tomorrow on this X-ray stuff, your Honor. With that I am through for the rest of the day.

Mr. Baker: I don't care to cross examine until his examination in chief is complete.

The Court: Very well.

(Thereupon, the witness was temporarily excused.)

ZOA H. ZANE

resumed the witness stand and testified further as follows:

Cross Examination Resumed

Mr. Baker: [103]

Q. Mrs. Zane, what date, do you remember, you left the hospital?

A. On March 8, I believe, 1943.

Q. And who paid the hospital bills and the expenses between February 9 and March 8, February 9, the date you executed the release?

A. I did.

Q. By check on the bank there at Indio?

A. Yes.

Q. Is that a part of the money that had been paid you in settlement? A. Yes.

Q. By the Pacific Greyhound Lines?

A. Yes, sir.

Q. Now, you said, Mrs. Zane, that you did not have any of this \$14,500.00 left, is that correct, that was paid you? A. No, I don't have.

Q. How was that? A. No.

Q. Well, you do have or you don't have?

A. That is correct, I don't have.

Q. You don't have any of it left?

A. No. [104]

Q. Is that correct? A. No.

Q. That \$14,500.00. Well, now, will you itemize to me exactly where that money was spent, please.

A. We bought a home.

Q. How much did you pay for your home?

A. \$5,000.00.

(Testimony of Zoa H. Zane.)

Q. And when did you buy that home?

A. In August, I believe, of 1943.

Q. You bought that in August, 1923?

A. 1943.

Q. Do you remember what date?

A. I think it was about the first, something like that.

Q. The 1st of August? A. Yes.

Q. And from whom did you purchase it?

A. From Mr. Snurr, I think that is right.

Q. Through what real estate agent?

A. I don't believe it was listed.

Q. Where is the house located?

A. 1722 W. Tonto.

Q. That is where you are now living?

A. Yes.

Q. You pay all cash for it? [105]

A. Yes.

Q. And owe nothing on the house?

A. No.

Q. Now, that is \$5,000.00. That leaves \$9,500.00 to account for. Now, where is the rest of it?

A. That is doctor bills, X-rays.

Q. Well, now, just count \$9,500.00 worth of doctor bills and X-rays, please. Just start listing them one by one. Now, state your first one. I will start you off. \$140.00 you paid to the Indio hospital. That is \$140.00? A. Yes.

Q. All right. Now, what is the next item you paid? A. \$200.00 to Lytton-Smith.

Q. How is that?

(Testimony of Zoa H. Zane.)

A. \$200.00 to Dr. Lytton-Smith.

Q. He said he didn't remember, but you think it is \$200.00? A. I know it was.

Q. How is that? A. Yes.

Q. Dr. Lytton-Smith. Now, what is the next item you paid?

A. Well, the hospital bill was \$185.00, I [106] think.

Q. Hospital, one hundred eighty-five. All right, what is the next item you paid for either hospital or medical expenses?

A. \$300.00 when I went to see Dr. Wilson.

Q. Do you have a bill for that or itemization for that \$300.00 item? A. No, I don't.

Q. How did you arrive at your \$300.00? By what process do you make the sum of \$300.00?

A. That is what it took to live six weeks I was over there to get an appointment and pay my transportation there and back.

Q. Do I understand that you went to Los Angeles and then waited six weeks to see Dr. Wilson?

A. Yes.

Q. You did?

A. I might not have waited six weeks, but it took that long to get gasoline back.

Q. Get your gasoline back? A. Yes.

Q. That wasn't a part of your vacation then, was it? A. It wasn't no vacation to me.

Q. Did you write him in advance and make an appointment with him? [107]

A. No.

(Testimony of Zoa H. Zane.)

Q. You did not. Do I understand it took you six weeks? You say it took you six weeks before you could see this doctor, is that correct?

A. It took more than a month to get an appointment with Dr. Lytton-Smith the first time.

Q. Well, all right. Then you knew ahead of time these doctors were pretty busy, because you say it took you over a month to get an appointment with Dr. Lytton-Smith? A. Yes.

Q. So you went to Los Angeles without making an appointment with Dr. Wilson?

Mr. Carson: That is not the record. It was Dr. Lytton-Smith who testified he directed her to go there.

The Court: No, and argumentative.

Mr. Baker: Anyway, you didn't write in advance to Dr. Wilson to try to get an appointment?

A. No.

Q. So you say that was \$300.00? A. Yes.

Q. What is your next item for expenses on medical bills?

A. Well, there is X-rays—there is a bunch of bills there for X-rays. [108]

Q. X-rays? A. Yes.

Q. What was the amount of the cost for the X-rays?

A. Oh, I don't know. There was \$10.00—\$10.00 and \$13.00 every time they were taken.

Q. You testified you were X-rayed once by Dr. Ryerson and the next X-rays were—the Naval Hos-

(Testimony of Zoa H. Zane.)

pital. That is only two. That would only be about \$25.00.

A. Dr. Lytton-Smith used about \$50.00 worth when he operated on it.

Q. If he did he doesn't know it. He used Dr. Ryerson's.

A. They were taken at the Good Samaritan. There is bills for them right there.

Q. Dr. Lytton-Smith didn't testify to any such thing.

Mr. Carson: You asked a question and she has the right to answer it, Mr. Baker.

Mr. Baker: Well, all right. Tell me what X-rays were taken and let's find out. Let's get your bills; let's find out what you paid for them. (Looking through documents).

Mrs. Zane, just to save time, at this time you don't know what you had paid for the X-rays, [109] but you will find out by tomorrow some time? Is that the extent of your medical expenses that you had? A. Oh, I guess that it is.

Q. That covers it; that totals \$825.00, according to my computation. Mr. Jack Zane is your husband? A. Yes.

Q. He is a wage earner, is he not?

A. Yes.

Q. And since the time you have been injured he has been either working or in the Navy, one way or the other? A. Yes.

Q. Now, before the time of this accident at the

(Testimony of Zoa H. Zane.)

time you were married, did you have any occupation of any kind while you were married?

A. Oh, I did a little laundry work and a little waitress work.

Q. How much work did you do during your married life before this accident?

A. Oh, I don't suppose any more than three months altogether.

Q. After you left the hospital in Indio, Mrs. Zane, will you describe what pain you suffered in this right leg? [110]

A. Well, just pain. A whole lot depends on the way I move it and the way I handle it. At night especially it bothers me a lot. It seems more like muscles jerking, or something like that.

Q. The same kind of pain that you suffered during the time you were in the Indio hospital, substantially? A. Yes.

Q. That continued, did it? A. Yes.

Q. After you got home? A. Yes.

Q. You suffered great discomfort during all of that time, is that right?

A. Yes. It still is uncomfortable.

Q. But the first time you went to a doctor, I believe you said, it was sometime in the latter part of August, 1943. A. That is right.

Q. You never went to any physician or doctor before that time? A. No.

Q. Although the pain was prominent all the time? A. Yes.

(Testimony of Zoa H. Zane.)

Q. I believe you stated that the first [111] physician you consulted was Dr. Ryerson?

A. Yes.

Q. And where is his office, Mrs. Zane?

A. It is on Fifteenth Street and McDowell Road.

Q. Now, to return back to a matter, Mrs. Zane, I am now referring to this alleged release that you said Mr. Cameron left with you to be signed and which apparently was not signed, and which you said was with you several days, is that right?

A. Yes.

Q. And then finally he took it? A. Yes.

Q. You said that stated the consideration to be fourteen thousand, five hundred?

A. Yes, it was.

Q. For your release? A. Yes.

Q. Well, that would have been incorrect according to your own telegram, would it not, because you would also get your medical bills?

A. The medical bills weren't mine, they were the Greyhound's.

Q. Now, do I understand that this release that you say that Mr. Cameron left with you for some days was on a regular printed form? [112]

A. It was on a printed form, yes.

Q. Was it on substantially the same printed form as Defendant's Exhibit B;; substantially this same printed form, (Showing document to witness)? A. Yes, it probably was.

Q. But you said that in that release it was recited the injuries that you suffered?

(Testimony of Zoa H. Zane.)

A. Yes.

Q. What did it recite in that respect, what injuries?

A. It said, "Loss of right foot and lower leg".

Q. It said, "Loss of right foot and lower leg"?

A. Loss of lower leg and right foot, or something like that.

Q. And that is all it stated, was it?

A. Well, the one I had said, "All injuries known or unknown", or something to that effect.

Q. But insofar as the ink part, we will put it outside of the printed matter, the only injury recited was the loss of your right foot and lower leg?

A. Yes.

Q. Is that correct? A. Yes.

Mr. Baker: Will you mark this for identification [113] for me, please.

(The document was marked as Defendant's Exhibit E for identification.)

Mr. Baker: I am handing you Defendant's Exhibit E for identification, and you can compare that. Defendant's Exhibit E for identification is exactly the same form as the release that you signed, excluding the filled-in blanks, is it not? (Handing document to the witness.)

(The witness looks over the document.)

Mr. Baker: That is the same form, is it not?

A. Yes, it looks like it.

Q. Will you take this pencil, please, and you write in in the proper blank there this description

(Testimony of Zoa H. Zane.)

of the injuries that you say was included in this original release that Cameron had given you.

(The witness complies.)

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was received as Defendant's Exhibit E in evidence and was read to the jury by Mr. Baker.)

DEFENDANT'S EXHIBIT E

RELEASE IN FULL

Received of Pacific Greyhound Lines the sum of
.....Dollars (\$14,500).

In consideration of which sum I hereby release and discharge Pacific Greyhound Lines of and from any and all claims and demands which I now have or may hereafter have, on account of or arising out of an accident which occurred on or about the
.....day of....., 19.. at.....
.....Streetresulting in
lose of Right foot & Lower leg.

It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.

It is further understood and agreed that the payment of said sum is not, and is not to be construed

(Testimony of Zoa H. Zane.)

as, an admission on the part of said payors of any liability whatsoever in consequence of said accident.

Dated at....., this.....day of
....., 19..

..... (L. S.)

..... (L. S.)

..... (L. S.)

.....

Witness

.....

Address

.....

Witness

.....

Address

This release should not be signed unless read
by or read to the person signing same

State of.....County of.....ss.

On the.....day of.....19.., be-
fore me personally appeared.....to
me known and known to me to be the same person
mentioned and described in and who executed the
above instrument and.....acknowledged to me
that.....executed the same.

.....

Notary Public.

Section 1542 of the Civil Code referred to in the
above release reads as follows:

“1542. Certain claims not affected by general

(Testimony of Zoa H. Zane.)

release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor.”

Form 71008C 20M 4-42 (S&C)

Mr. Baker:

Q. So that is your injuries that were recited in that release that was handed to you? [114]

A. That is all that was recited, yes.

Q. As a matter of fact, in that same accident you suffered a fractured left ankle, didn't you?

A. Yes, I did.

Q. And that was not only known to the doctors, but Mr. Cameron saw to it that you were thoroughly treated for it in that hospital?

A. I beg your pardon.

Q. But that was fully known to the doctors and you were treated for it, weren't you?

A. Yes, the fractured ankle.

Q. That was suffered in that same accident, that is a fact, isn't it? A. Yes.

Q. So you say that this release that he handed to you didn't cover the fracture of the left ankle, is that true; is that your testimony? Do I understand that is correct, Mrs. Zane?

A. Yes, but the fractured ankle was not per-

(Testimony of Zoa H. Zane.)

manent. It was healed within two weeks; two or three weeks.

Q. Mrs. Zane, I am returning now to the question of this money, the disposal of this money that was paid you. In your complaint your attorneys have recited that the reason you have been unable to return this money to the Pacific Greyhound [115] Lines that they paid you in consideration of some provisions in this release that you gave them is, that you expended the money and was unable to return it, and that is—I am explaining that—that is why I am directing this question to you. According to the computations you have given us, I account for \$5,000.00 expended on the house and \$825.00 medical expenses. Now, what has become of the rest of the money, and furthermore, you explained to me that your husband has been a wage earner during that time. What became of the rest of the money that you are unable to make return to the Pacific Greyhound Lines?

A. Well, it has been spent.

Q. For what?

A. Well, get my cancelled checks and I will show you.

Q. So in the course of a matter of a year and a half you spent all of that money, is that right, you and your husband?

A. Well, there was almost a year I had to hire everything done.

Q. You filed this suit more than six months ago, so at that time allegedly you didn't have any-

(Testimony of Zoa H. Zane.)

thing, so we will say that in the course of two years, then, if you want to put it that way, [116] all of the money had been spent, is that correct?

A. Oh, I probably can dig up a few dollars, four or five.

Q. Anything wrong with your right knee, Mrs. Zane? A. Yes, it is stiff.

Q. Your right knee is stiff? A. Yes.

Q. And how long has that been stiff?

A. Ever since the amputation?

Q. Do you know, or do you expect to successfully wear an artificial limb with a stiff right knee?

A. Dr. Palmer said it would limber up with use.

Q. Did Dr. Lytton-Smith know that that right knee was stiff, or do you know?

A. I don't know.

Q. You don't know whether he knows that or not? The question was asked you, Mrs. Zane, by Mr. Stahl in his examination in chief as to whether you believed all the statements that this man Cameron made to you and you absolutely relied upon him. You said you did. Do you still say that?

A. Well, yes, I believe what he told me. [117]

Q. Although, you were aware that he was the claim agent for the Pacific Greyhound Lines and was not down there as your attorney, but was down there for the purpose of settling a claim with you, nevertheless, you say that you put implicit faith in everything that this claim agent told you, is that correct?

(Testimony of Zoa H. Zane.)

Mr. Carson: That question is a little bit argumentative.

The Court: Yes, it is a little bit argumentative on that.

Mr. Carson: I'd say it was solely argumentative.

Mr. Baker: I understand you do say that you put faith in whatever his claim agent told you, is that right?

A. Well, regarding the hospital and such as that, I did, yes.

Q. And regarding the extent of your injuries also? A. Yes.

Q. You just took whatever he said as being a hundred percent right?

A. Dr. Blackman would always confirm his statement about my injuries.

Q. You stated you could produce checks [118] showing where all of this money has been spent. Will you do so by tomorrow—would you endeavor to do so by tomorrow, please? A. Yes.

Mr. Baker: With the reservation of further cross examination along that line, I am through.

Re-direct Examination

Mr. Stahl:

Q. Mrs. Zane, in answer to a question by Mr. Baker, I believe he asked you whether you discussed the terms of the release before you signed it. To what did you refer there; to what?

(Testimony of Zoa H. Zane.)

A. He meant the release that Mr. Cameron left me for a few days.

Q. The one he had left with you?

A. Yes.

Q. Did you refer to this paper that has been introduced here—did you refer to Defendant's Exhibit B, this paper, or did you refer to the other one?

A. No, that is not the one that was left with me for several days.

Q. In addition to your expenditures, has your husband—you said something about him working. Has he been in the service since this accident?

A. Yes. [119]

Q. For how long?

A. For about ten or eleven months, I think.

Q. And he supported the family while he was in the service?

A. I got a hundred dollars a month for I and the two children.

Q. And did you spend any of this money which you received from the settlement during that time?

A. Oh, yes.

Q. Do you remember paying a bill to Dr. Stevens in connection with the anesthetic or the operation?

A. That was for the anesthetic.

Mr. Stahl: I ask that this be marked for identification.

(The document was marked as Plaintiffs' Exhibit 5 for identification.)

(Testimony of Zoa H. Zane.)

Mr. Stahl: I show you Plaintiffs' Exhibit 5 for identification. Is that the bill that you have referred to just now?

A. That was for the anesthetic.

Mr. Baker: No objection.

Mr. Stahl: I offer this in evidence.

(The document was received as Plaintiffs' Exhibit 5 in evidence.)

PLAINTIFFS' EXHIBIT NO. 5

Robert H. Stevens, M. D.
808 Professional Building
Phoenix, Arizona

Date 10-27-43

Mrs. Jack Zane
1722 W. Tonto
City

Date	For Professional Services Rendered	Amount
	Anesthetic—3 hours	\$50.00
	Surgeon: Dr. Lytton-Smith	

All Charges After 25th of Month Will Appear
on Next Month's Statement

Mr. Stahl: Now, this is Plaintiffs' Exhibit [120] 5, which I will read to the jury.

(Thereupon the document was read to the jury by Mr. Stahl.)

(Testimony of Zoa H. Zane.)

Mr. Stahl: Did you pay that amount to Dr. Stevens?

A. Yes.

Q. Now, is that amount included in the amount we set up in our complaint, where we say, "Doctors' bills, \$200.00"? A. I think so.

Q. That is a part of that?

A. No, no. Dr. Lytton-Smith's bill alone was \$200.00.

Q. So that is in addition to that?

A. Yes, in addition.

Q. Was that included in the hospital bills of \$185.00? A. No.

Q. How about where you have the medical expense of \$300.00?

A. No, it was not in that.

Q. When you left the hospital, how did you get home? A. By ambulance.

Mr. Stahl: I ask that this be marked.

(The document was marked as Plaintiffs' [121] Exhibit 6 for identification.)

Mr. Stahl: I hand you Plaintiffs' Exhibit 6 for identification. What does that represent?

A. That was when I went home from the hospital, I guess. It looks like that day.

Mr. Baker: No objection.

(The document was marked as Plaintiffs' 6 in evidence and read to the jury by Mr. Stahl.)

(Testimony of Zoa H. Zane.)

PLAINTIFFS' EXHIBIT NO. 6

Ambuliner Service

GRIMSHAW MORTUARY

334 West Monroe

Phone 3-5914

No. 4957

Oct—21—1943

Call at Good Samaritan Room 405

Patient Mrs. Zane

To East Tonto

Requested by Hospital

Time 10:30 A. M.

Charges \$7.50 Att. Phil

Paid 10-21-43

Mr. Stahl: You paid that bill, did you?

A. Yes.

Mr. Stahl: I ask that this be marked.

(The document was marked as Plaintiffs' Exhibit 7 for identification.)

Mr. Stahl: When you entered the hospital did you pay the hospital; make a deposit?

A. Yes, \$50.00.

Q. I will hand you Plaintiffs' Exhibit 7 for identification. What is that?

A. I guess that is upon entrance.

(Testimony of Zoa H. Zane.)

Mr. Stahl: That is Plaintiffs' Exhibit Number 7, you have no objection to the admission of it?

Mr. Baker: How is that?

Mr. Stahl: You have no objection to this, do you?

Mr. Baker: Well, I don't want—that is a [122] duplication. She has already testified about one hospital bill.

Mr. Stahl: Is this a part, Mrs. Zane, of the hospital bills for \$185.00 that you said you paid?

A. I don't remember whether it is or not. I would have to look through my checks to see.

Mr. Baker: Well, I recommend you pass that until tomorrow and have a chance to fix up a statement.

Mr. Stahl: Yes, I will. I believe I asked you, did I, Mrs. Zane, about the amount of help at your house that was necessitated by reason of your being unable to get around on account of your hip injury?

A. Yes.

Q. What did you say that amounted to?

A. Around \$700.00. That was up to the time that brief was filed.

Q. Have you had any expenses since then?

A. I have some help all the time.

Q. Is that occasioned by your being unable to get around except on crutches? A. Yes.

Q. Mr. Baker asked you, I believe, in regard to that voucher for fourteen hundred and some dollars, the small voucher in reference to hospital [123] bills—yes, \$1,467.00; that is Defendant's Ex-

(Testimony of Zoa H. Zane.)

hibit D in evidence, this voucher here, Defendant's Exhibit D. I think he asked you something and referred to that amount as to whether that was the amount of the hospital bill. Aside from this itself, do you know what the amount of the hospital bill was? A. No.

Q. All you knew was the amount stated in this paper? A. That is all.

Mr. Stahl: I believe that is all.

The Court: Anything further?

Mr. Baker: I reserved further examination concerning the money she spent. She is supposed to bring it in tomorrow.

The Court: We will suspend until 10:00 tomorrow morning. Keep in mind the Court's admonition.

(Thereupon a recess was taken 4:40 o'clock P. M. of the same day.) [124]

10 o'clock a. m., May 18th, 1945, all parties as heretofore noted being present, the trial resumed as follows:

The Court: You may proceed.

ZOA H. ZANE

resumed the witness stand and testified as follows:

Re-Cross Examination

Mr. Baker:

Q. Mrs. Zane, on yesterday I inquired of you as to the nature of the expenditures made by you

(Testimony of Zoa H. Zane.)

showing the dissipation of \$14,500.00 paid to you. You stated that you could not say, but that your cancelled checks would show those expenditures?

A. Yes.

Q. Have you produced those cancelled checks?

A. Yes.

Q. May I see them?

A. Yes. (Handing documents to Mr. Baker).

Mr. Baker: To save time, instead of interrogating her on those checks at this time I will go through them during the noon hour and go on to the next matter. Is that all right with you?

Mr. Carlson: Yes.

Mr. Stahl: I don't know whether there are any questions I want to ask Mrs. Zane.

Mr. Baker: I have one or two questions to [125] ask Mrs. Zane, if that is satisfactory about these checks?

Mr. Stahl: Yes.

Mr. Baker: Mrs. Zane, with reference to the \$500.00 that was paid to you on account of the injuries to your child, that also has been expended, has it?

A. That has been put into War Bonds for the child.

Q. So you still have \$500.00 that was paid for the benefit of the child, is that right?

A. I had nothing to do with that.

Q. Who handled that?

A. My husband, Mr. Zane.

Q. Your husband? A. Yes.

(Testimony of Zoa H. Zane.)

Mr. Baker: That is all.

Re-Direct Examination

Mr. Stahl:

Q. In connection with the child, Mrs. Zane, did you pay any doctor or hospital bills in Indio while the child was at the hospital?

A. No, I didn't.

Q. How is that?

A. No, I didn't pay any hospital or doctor [126] bills.

Q. Did you receive a bill for any of that?

A. No, I never saw the bill for that.

Q. I want to ask you, maybe you have already testified to it, but I don't recall. You related a conversation between Mr. Cameron and Dr. Blackman with reference to the settlement of that bill for charges for the hospital and doctors in Indio. Just about when was that?

A. Well, I think it—just a few weeks before I made up my mind that I would take \$15,000.00.

Q. Do you know about what date?

A. No, it was sometime in January—along, maybe around the 20th, something like that.

Q. You may also have testified to this, but prior to this accident on December 11th, 1942, what had been the condition of your health?

A. Well, I was always healthy and was raised on a farm.

Q. Prior to that time you stated you never had any accidents or injuries?

(Testimony of Zoa H. Zane.)

A. No, I had never been ill or I had never been in any accident.

Q. And prior to December 11th, will you state whether or not you had the full use of your limbs and legs? [127]

A. Yes, I was healthy.

Q. Did you—even after December 11th, 1942, did you have any accidents at all up until after the time of the operation over here in Phoenix by Dr. Lytton-Smith?

A. No, sir—

Mr. Baker: (Interrupting) Just a minute. May I have that question?

(The question was read by the reporter.)

Mr. Stahl: And after December 11th, did you have any injuries of any kind that you know of?

A. No, sir.

Q. I mean, any injuries occurred to you that you know of after December 11th and after the operation by Dr. Lytton-Smith here in Phoenix, which you state was along in August or September, 1943?

A. No.

Q. Were you injured in any way that you know of?

A. No, sir; I was not.

Q. Now, during the time you were in the hospital over there up until the time of the settlement, will you state whether or not you discussed the matters with your husband, Mrs. Zane?

A. Yes, we discussed them. [128]

Q. Will you state whether or not you told him of the statements that had been made to you by the agent—the claim agent and this doctor with reference to the extent of your injuries?

(Testimony of Zoa H. Zane.)

A. Yes, sir; I told him what the doctor and Mr. Cameron told me.

Q. What they told you about the artificial limb?

A. Yes, sir.

Q. Now, Mrs. Zane, at the time of this accident did you have any—did you or husband have any money or property of any kind? A. No, sir.

Q. And did you have any since that time except other than the earnings? A. No, sir.

Q. So the money received from the accident was the only money or property you had?

A. Aside from my—

Mr. Baker: (Interrupting) Just a minute, we object to that as definitely leading and suggestive.

Mr. Stahl: I admit it. Will you state what other property, if any, or money you and your husband, or either of you had?

A. None, aside from his income. [129]

Mr. Stahl: I believe that is all.

Re-Cross Examination

Mr. Baker:

Q. Your husband's income was the same after this accident as it had been before, substantially?

A. Yes, except while he was in the Navy.

Q. Well then, you got compensation to the extent of \$100.00 a month, did you not, while he was in the Navy? A. Yes.

Q. By the way, when was he in the Navy, between what dates?

(Testimony of Zoa H. Zane.)

A. From March of 1944, until February of this year.

Q. Mr. Stahl inquired of you concerning some conversation at the hospital that you overheard. What conversation do you refer to when you answered his question?

A. It was between Mr. Cameron and Dr. Blackman.

Q. That is the one where you testified they were in dispute as to the amount of the hospital bill?

A. Yes.

Q. Will you state when you heard that [130] conversation; when was that conversation?

A. I said it was probably around the 20th of January.

Q. Was it after the time that you sent your telegram saying you would accept \$15,000.00?

A. No.

Q. Was it before that time?

A. Yes, it was before.

Q. How long before?

A. Oh, I don't know; possibly a week or ten days.

Q. Did you then know that the sum of \$15,000.00 in settlement then had been offered to you?

A. I beg your pardon?

Q. Had the settlement in the sum of \$15,000.00 been offered to you when you overheard this conversation between Mr. Cameron and Dr. Blackman?

A. No.

Q. It had not? A. No.

Q. At that time—I am referring now to the

(Testimony of Zoa H. Zane.)

time of this conversation that you overheard, were you then insisting that the Greyhound Lines pay your medical bills at the hospital?

A. Was I insisting on their paying it? [131]

Q. Yes.

A. They had always told me that they were going to pay it.

Mr. Baker: That is all.

Mr. Stahl: That is all.

(The witness was excused.)

Mr. Carson: Jack Zane.

Mr. Stahl: If the Court please, very likely we will have to take this witness off for Dr. Lytton-Smith, who is to be here at 10:30.

Mr. Baker: All right.

JACK ZANE

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

Direct Examination

Mr. Carson:

Q. What is your name, please?

A. Jack Zane.

Q. Where do you live, Mr. Zane?

A. 1722 West Tonto.

Q. You are the husband of Zoa Zane?

A. Right.

Q. Prior to December 11th, 1942, did you know

(Testimony of Jack Zane.)

the physical condition of your wife, Jack, in general? [132]

A. Yes.

Q. What was that condition?

A. Well, she was in good health.

Q. Had she ever had any injuries that you know of afterwards?

A. No.

Q. When was the first time you heard, Jack, about your wife's accident in California? Will you just tell the Court and jury here when you heard about that; what happened; tell it in your own way?

A. Well, that was about six days after the wreck.

Q. How did it come to be relayed to you?

A. By telegram.

Q. Well, did you get a telegram, or where did you live at that time; where were you?

A. I was working at Yuma and I was living at a hotel. I can't call the name of the hotel.

Q. Do you know why the telegram was delayed?

A. Well, in some way I would move two or three times. We only stayed a couple of days in the hotel at that time.

Q. Then what happened; what did you do after you got the telegram?

A. I got on the bus and left that night. [133]

Q. Now, just tell the Court and jury what happened from the time you landed in Indio, if you remember.

A. Well, I think it was Friday morning that I got into Indio.

(Testimony of Jack Zane.)

Q. Was that after——

A. (Interrupting) After the telegram.

Q. Friday morning, that was—you don't know how many days after the accident?

A. Well, it had been seven days. She was taken to the hospital on Friday. I was there the following Friday.

Q. Now, then, what happened?

A. Well, I didn't get to see her until about 10 o'clock that morning, and I think it was about two weeks before I got to see Dr. Blackman.

Q. Did you meet a gentleman by the name of Mr. Cameron? A. I did.

Q. When was that, if you remember?

A. That was two or three days after that, and as well as I can recall it was on a Sunday.

Q. Just tell where it was and what was said and what took place?

A. Well, I met him in my wife's room and I was introduced in there and we didn't have much [134] conversation in there, and then he went out to the car. It was parked in front of the hospital.

Q. Did he give you his card?

A. I don't remember.

Q. What took place; what was said?

A. Well, we had quite a long talk over the condition Mrs. Zane was in at the time she was at the hospital, and I brought up about I thought she should be moved to Los Angeles, I didn't think they had the facilities in a small hospital there for that kind of a case and I knew lesser cases have been

(Testimony of Jack Zane.)

moved to Los Angeles prior to this time, and he assured me that she didn't need to be moved, that Dr. Blackman was one of the best doctors and just as good a doctor in or out of Los Angeles; he had taken care of other cases for the company and employees running in and out of Indio.

Q. Do you remember of any conversation that you had with him as to whether or not he was their doctor, or what did he say in that regard?

Mr. Baker: Just a minute. If the Court please, this leading and suggestive, and furthermore it has already been answered.

Mr. Carson: Well, it has not been answered, Your Honor. I don't think it is leading and suggestive. I think the question is competent. [135]

The Court: Well, he just answered it, didn't he?

Mr. Carson: Well, repeat that conversation again.

The Court: Oh, it is not necessary. I can't take up the jury's time with that.

Mr. Carson: I see, okay. Was there anything else said at the time, Jack?

A. No, I can't remember all of it. It has been quite a while back.

Q. Did he say anything about the condition of your wife? A. Yes.

Mr. Baker: We object to that upon the ground it has been answered already.

The Court: Oh, he may answer.

Mr. Carson: What did he say?

A. Well, he said the condition she were in when

(Testimony of Jack Zane.)

she were out at the hospital, they thought for a while they were going to lose her.

Q. Do you remember any further conversation with Mr. Cameron? Do you remember a conversation—any conversation you had—what he did on the day that the case was settled, Jack?

Mr. Baker: Would you give me that?

(The question was read by the reporter.) [136]

Mr. Baker: I think I will object to that on the ground it is unintelligible.

Mr. Carson: That is probably true. Did you hear any conversation on the day the case was settled, what Mr. Cameron said or done? Just tell in your own way, Jack.

A. Well, he was in the room there at the time of this release.

Q. Just describe what took place.

A. All right. Well, he thought it was a good settlement we were getting. He stated to the wife and myself that there was nothing more than what was to be done at that time wrong with her and that she could wear an artificial leg the same as Dr. Blackman stated.

Q. How long was he there?

A. Oh, I don't know; I couldn't swear to that.

Q. Did he storm a little bit around there that day?

A. He did.

Q. What did he say; what was his attitude?

A. Well, he was tired fooling with that case and in lots of ways he was pretty nasty about it.

(Testimony of Jack Zane.)

Q. What did he say about it in regard to that; repeat the conversation, if you can, Jack? [137]

A. He would get in trouble with the home office. He spent all the time he was going to spend on that case.

Q. Was Zoa crying that day? A. She was.

Q. Were you in Indio all the time, Jack?

A. No.

Q. Where were you; what were you doing?

A. Las Vegas, Nevada.

Q. What were you doing?

A. Working for the electric company.

Q. War work? A. Yes.

Q. How much time did you spend in Indio?

A. I don't know. I was in and out of Indio and Las Vegas working for the same company on two jobs.

Q. Did you ever talk to Dr. Blackman?

Mr. Baker: Just a minute; what was that question?

(The question was read by the reporter.)

Mr. Baker: Answer that yes or no.

A. Yes.

Mr. Carson: Do you remember on what occasions, Jack, if you can?

A. Well, the first time I talked to him was [138] just about the wife's condition.

Q. What did he say? A. Well——

Mr. Baker: (Interrupting) Just a minute. We object to that, if the Court please, on the ground

(Testimony of Jack Zane.)

that as far as this Defendant is concerned it is purely hearsay.

The Court: He may answer.

A. Well, just the condition she was in; she was getting along better; they had done all they could.

Mr. Carson: Did he ever assure you that she would be able to wear an artificial limb?

Mr. Baker: Just a minute. Object on the ground it is leading and suggestive.

The Court: Yes.

Mr. Carson: What did he say in regard to—what did Dr. Blackman say in regard to the use of an artificial limb, if he said anything?

Mr. Baker: We object to that on the ground it is hearsay as far as the Defendant is concerned.

The Court: All right. He may answer.

Mr. Carson: Do you remember what he said, Jack?

A. Well, he said she would be able to use an artificial limb; there was no other injuries. [139]

Q. No other injuries. Did you discuss this matter with your wife about what he had said?

A. Yes, we did.

Q. Did she discuss with you what the claim agent and the doctor told her—told you—told her.

Mr. Baker: Just a minute. We object to that on the ground it is wholly hearsay, a conversation between two plaintiffs.

The Court: Yes.

Mr. Carson: While you were at Las Vegas did you make an appointment with Mr. Cameron, and

(Testimony of Jack Zane.)

could you get down there? You can relate what happened about that, Jack.

A. No, I didn't make no appointments with him.

Q. Well, did he seem angry because you could not get back there sometime to sign the papers?

A. Yes.

Mr. Baker: Just a minute. He asks the question and gives the answer to the witness.

Mr. Carson: Well, Jack, do you remember where that release was that day, or a release—do you remember of Zoa having possession of a release before Mr. Cameron came back; was it in the room, or do you remember? [140]

A. Yes, the release was in the room. What place it was in the room I don't know.

Q. Can you relate what happened when that release was signed or a release was signed; What happened?

Mr. Baker: That has been asked and answered once, if the Court please.

The Court: I don't know. This examination is a little confusing to me. I can't follow it.

Mr. Carson: Well, that is proper. Jack, state whether or not you believed the statements that Mr. Cameron and Dr. Blackman made to you concerning her condition?

A. Yes, I believed them.

Q. Did you rely on them?

A. Certainly.

Q. Would you have signed that release if it had not been for those representations? A. No.

(Testimony of Jack Zane.)

Q. If you had known that—state whether or not if you had known that she had this hip fracture you would have signed the release?

Mr. Baker: Just a minute, that is assuming a fact that she did have a fractured hip at that time.

The Witness: Yes. [141]

Mr. Carson: If you had known that she did have a hip fracture, would you have signed the release?

A. Why, no.

Q. Can you state what you thought the extent of the injuries were at the time of signing the release, if you know?

Mr. Baker: Just a minute. What was that question?

(The question was read by the reporter.)

Mr. Baker: Well, we object to what he thought, if the Court please. She testified and the testimony is in here what her condition was.

Mr. Carson: I think he can answer the question.

The Court: No. He has answered that several times.

Mr. Carson: Well, if he has, that is all.

Mr. Baker: Dr. Lytton-Smith is here if you care to put him on.

Mr. Carson: All right.

(The witness was temporarily excused.)

DR. JAMES LYTTON-SMITH

resumed the witness stand for further examination, and having been heretofore duly sworn, testified further as follows: [142]

Direct Examination Resumed

Mr. Carson:

Q. Dr. Lytton-Smith, you have some X-rays there, do you? A. Yes.

Q. When were they taken, do you know?

A. I had some taken on October 4th, 1943; some on October 12th, 1943; October 13th, 1943; October 20th, 1943; January 31st, 1944; November 17th, 1943; December 20th, 1943.

Q. Where were they taken, do you know, Doctor?

A. I believe all of these were taken at the Good Samaritan Hospital.

Q. That is, pictures of Zoa Zane?

A. Yes.

Q. Can you state how they come to be taken; what was the reason for their taking, Doctor?

A. The X-rays were taken, as I recall it, before and during the course and following surgery.

Q. That is, the surgery that you performed at the Good Samaritan? A. Yes.

Q. Would you tell the Court and jury the circumstances; what took place?

Mr. Baker: Just a minute. First, he had better identify these. [143]

Mr. Carson: Well, will you hand these—the ones that were taken, Doctor——

The Witness: Do what, now?

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: The X-rays that were taken, can you identify that were taken, the ones you used?

A. I can identify the ones I saw taken.

Q. They were all taken at the Good Samaritan Hospital?

A. They were all taken at my order.

Q. And taken at the Good Samaritan Hospital?

A. Yes.

Q. Get those out, all of them, the ones you saw taken and the ones taken at your order.

A. Now, certain ones I saw taken, was present when they were taken.

Mr. Baker: Mr. Carson, insofar as that is concerned, I am not requiring the technician that took those. I want you to identify that they were taken at a recognized place at his instructions, that is all; that is sufficient.

Mr. Carson: All of these X-rays that you have or used were taken at the Good Samaritan Hospital at your request?

A. Yes.

Q. Will you separate those, Doctor, that were? [144]

A. These are the ones that were taken while I was present. These X-rays——

Mr. Carson (Interrupting): Let me have that——

The Witness (Continuing): ——which is dated October 31st.

Mr. Carson: Can this be admitted in evidence, Mr. Baker?

Mr. Baker: I would like to look at it first.

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: Okay. (Handing the instrument to Mr. Baker.)

Mr. Baker: I'd like to ask one question.

The Witness: I beg pardon. I say, October 31st or October 13th?

Mr. Baker: October 13th, 1943, it is marked.

The Witness: That is correct.

Mr. Baker: That was after you performed the operation?

A. That was during the operation.

Q. That shows your bone graft, does it?

A. No. That has got a pin and the drill which was being introduced to make a place for the bone graft to be admitted.

Q. That was during the operation?

A. That was during the operation.

Q. So that dark spot in there is the drill [145] and not the grafted bone, is that correct?

A. That is correct, yes.

Mr. Baker: I have no objection.

Mr. Carson: I offer it in evidence.

(The document was marked as Plaintiffs' Exhibit 8 in evidence.)

Mr. Carson: He stated they were all taken in his presence.

The Witness: This one was taken before surgery. This one was taken following surgery with the bone graft in place.

Mr. Baker: I might say, to save time, I might ask the doctor how many of those are necessary?

Mr. Carson: How many of those are necessary?

(Testimony of Dr. James Lytton-Smith.)

A. I am just giving you the ones that were necessary. This shows the radiograph which was taken January, 1943, when the bone graft had absorbed and broken. I think the others are unnecessary.

Mr. Carson: May they all be admitted in evidence, Mr. Baker?

Mr. Baker: Four of them?

Mr. Carson: Yes.

Mr. Baker: I'd like to interrogate him with a couple of questions. So the record may show [146] what we are talking about, let me see if I can identify these. There is one, according to the tag attached to the photograph, that was taken on October 4th, 1943, and bears the Good Samaritan Hospital number 15036. That X-ray photograph was taken when, with reference to the operation performed on Mrs. Zane?

A. October 4th, 1943? That was before surgery.

Mr. Baker: We have no objection to that. I think you so testified.

(Thereupon the document was received as Plaintiffs' Exhibit 9 in evidence.)

Mr. Baker: I have another photograph which indicates that it was taken on October 13th, 1943, and bears the Good Samaritan Hospital number 15118. That, I believe, you testified, was taken during the operation? A. Yes.

Q. And the portion shown in black you say is the drill? A. That is the drill.

Mr. Baker: We have no objection to that.

(Testimony of Dr. James Lytton-Smith.)

(The document was received as Plaintiffs' Exhibit 8 in evidence.)

Mr. Baker: I have another photograph, which, [147] according to the record on the photograph, was taken October 20th, 1943, and bears the Good Samaritan Hospital's number 15162. That was taken after the operation?

A. Yes.

Q. And shows the bone graft, does it?

A. Yes.

Mr. Baker: Our objection to this offer is that it was taken after the operation had been performed and, (therefore, we would consider it as irrelevant, incompetent and immaterial.

The Court: It may be received.

(The document was received as Plaintiffs' Exhibit 10 in evidence.)

Mr. Baker: I have another photograph purporting to have been taken on January 31, 1944, bearing the Good Samaritan Hospital's number 16082. Was she still under your treatment at that time? A. Yes.

Q. Was she still in the hospital?

A. She had been discharged from the hospital and I think she was brought back into the hospital for that picture.

Mr. Baker: Our objection to this offer is the same as to the previous offer.

The Court: It may be received. [148]

(The document was received as Plaintiffs' Exhibit 11 in evidence.)

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: Mr Baker, will you stipulate that this is probably true?

Mr. Baker: I don't know.

Mr. Carson: Dr. Lytton-Smith, this plate here or chart, would you say that that represented a true picture of a person's leg?

A. Well, that is another skeleton.

Q. Another skeleton, but from here on down, that is the hip?

A. That is fairly true, yes.

Q. Will you describe to the jury, Doctor, the nature of the bone that fits—that is, the femur that fits into this place right here where this injury is that you operated. A. Yes.

The Court: He did that yesterday, didn't he?

Mr. Carson: Well, I don't know. I think, your Honor, the jury should have a picture of this whole thing.

The Court: Well, he drew a picture once, why do it again?

Mr. Carson: All right.

The Court: Wasn't that what you did yesterday?

A. Yes, sir. [149]

Mr. Carson: Now, can you interpret those X-rays, Doctor, that you have there?

A. Yes.

Q. Will you do that?

Mr. Baker: Will you, Doctor, in doing so, please indicate it by the exhibit number. Maybe the Clerk can help us so we may have a record of those things.

(Testimony of Dr. James Lytton-Smith.)

The Clerk: So you can identify the numbers, Doctor, they are in ink.

The Witness: X-ray Number 15036, Exhibit 9, shows that the neck of the femur has been broken, and that there, in my opinion, has been some absorption of the head; that is, of the neck of the femur, and that there is no evidence at this time of a union being present.

Exhibit Number 8 shows a reduction has been made, bringing the fragments into contact, and that a guide pin of the Brandberry type has been introduced, and that a drill of the Albee type is being introduced through the neck and into the head of the femur.

Exhibit marked Number 10 shows that the fragments are in contact, reduction has taken place and that the bone graft has been introduced which passes beneath the trochanter and through the neck [150] of the femur and into the head of the femur.

Exhibit Number 11 shows that there has apparently been absorption of the graft and that the graft is broken and that the shaft of the femur is riding upward with displacement.

Mr. Carson: Doctor, can you tell from the X-rays and from your knowledge of the case that you learned by observation, and as to what caused the injury to the femur that you operated on?

Mr. Baker: Now, I want to ask if you understood that question or not?

A. No, I don't know.

Mr. Carson: At the time it occurred.

(Testimony of Dr. James Lytton-Smith.)

The Witness: As to the time?

Mr. Carson: Yes.

A. I feel that it had happened quite a few months before the time that I first saw her. That is as definite as I can be.

Q. Doctor, assuming that the Plaintiff, Zoa H. Zane, prior to her injury on December 11th, 1942, was 23 years of age, a strong, healthy, robust girl, a mother of two children, able to do heavy physical work; had not in all her lifetime had any serious illness or accident so far as is known, no accidents that caused any fractures, and that at the time of the accident when a bus on [151] which she was riding ran in the rear of a truck smashing a part of the bus, throwing her violently from the bus to the ground, from which she suffered severe fractures and smashed her bones below the right knee making amputation necessary which confined her in the hospital in Indio, California, for approximately three months, suffered severe pain in her right leg after this amputation; and prior to the accident having the full use of her right leg, and in the early part of March, 1943, she was measured for an artificial limb by an agent of any artificial limb company in the city of Los Angeles, the result of the measurement showing that the upper part of her right leg was $2\frac{1}{2}$ inches shorter than the left leg; that she was unable to leave the hospital and wear an artificial limb; that a later operation was performed at the hospital in Indio, California, by Dr. Blackman to try to make it possible for her

(Testimony of Dr. James Lytton-Smith.)

to wear an artificial limb, and ever since leaving the hospital she has been in continuous pain; that in September or October of 1943, X-rays were taken showing a fracture where it was connected with the pelvis. In your examination you found that the X-ray pictures show an old fracture, and she suffered no falls or injuries between the time of the bus accident and the time [152] the X-rays were taken in September of 1943. Do you have an opinion, based upon your personal examination and your examination of the X-rays and the history of the case as I have given it to you, as to what was the cause of the fracture of the hip of Zoa H. Zane, if you have that opinion?

Mr. Baker: Just a minute. I object on the ground that it calls for a conclusion of the witness by way of a hypothetical question; the hypothetical question does not recite all the facts proven in the case and fails to state other facts which have been proven and which are pertinent to the answer called for by the question.

The Court: Well, that is a general objection. Now, you just state specifically what you have in mind.

Mr. Baker: It does not describe the treatment administered to the patient while she was in the Indio hospital; does not describe the operations which were performed on her and the purpose for such operations while she was in the Indio hospital. It fails to state the nature of the pains that she suffered; fails to state the treatment that was ad-

(Testimony of Dr. James Lytton-Smith.)

ministered to her by the nurses and others while she was at this hospital, and it assumes facts which have not been proven in the case [153] in that it assumes that her leg was $2\frac{1}{2}$ inches shorter while she was in the Indio hospital. Well, there is no proof of that——

Mr. Carson (Interrupting): Just a minute, Mr. Baker——

The Court (Interrupting): Just a minute. Let him finish.

Mr. Carson: Okay.

Mr. Baker: It states other facts which are not in accordance with the testimony; that is, competent testimony that has been introduced in the case, in that it recites matters as facts which are proven by hearsay.

Mr. Carson: Your Honor, on the question of being $2\frac{1}{2}$ inches shorter, I want the Court Reporter—now, if you remember that yesterday she testified, without objection—that was the first witness—on the part of Mr. Baker, that an agent came in from Los Angeles, measured her for an artificial limb, and that it was $2\frac{1}{2}$ inches shorter and she reported that to Dr. Blackman. Now, that was testified and without objection. The second one was objected to, and it has been—but there was no objection to that testimony and it went into the records.

Mr. Baker: Well, that is purely hearsay. [154]

The Court: Which leg was $2\frac{1}{2}$ inches shorter?

Mr. Carson: That the upper part of the right

(Testimony of Dr. James Lytton-Smith.)

leg was 2½ inches shorter than the upper part of the left leg.

Mr. Baker: She testified that some fellow that made the artificial limbs told her that.

Mr. Carson: Measured it. That went into the record and was not objected to. If there is any doubt about it let the Court Reporter refer to his notes.

The Court: Well, perhaps the doctor could testify to it in his examination. I don't know.

Mr. Carson: All right.

Mr. Baker: He can't testify to what existed at the time in Indio. You would not undertake to do so, would you, Doctor?

A. No.

The Court: Oh, well, go ahead and answer the question.

Mr. Carson: Go ahead and answer the question, Doctor Lytton-Smith.

The Witness: Now, the first question or the second question?

The Court: The hypothetical question.

A. The hypothetical question. I will say it was my opinion that her hip was fractured as a [155] result of the bus accident.

Mr. Carson: Doctor, did you ever measure her hip, the upper and right part of the—the right leg, or the upper part of her right leg and the left leg?

A. I don't recall. I do have, as stated in my notes, that there is a definite telescoping present which means the bone sliding up past the hip-joint,

(Testimony of Dr. James Lytton-Smith.)

and that was on my initial examination on September 27th, 1943.

Q. What do you mean by that, Doctor, riding up and down? Can you tell? Just explain.

A. Well, if this is broken and it just pushes it up, just slides the bone.

Q. This socket where it used to fit, is that right?

A. Yes.

Q. The X-rays that you showed to the jury reveal a fracture of this femur here, the femur bone attached to the hip on the right?

A. Revealed a fracture of the neck of the right femur.

Q. In any case, where there is an X-ray taken of that one——

A. (Interrupting): I beg your pardon?

Q. Would an X-ray picture taken of that condition [157] at any time reveal the fracture that exists there?

A. Well, that goes into the theoretical interpretation of X-rays. You mean, does it always show?

Q. Well, does it show in this particular case?

A. It shows a fracture of the neck of the femur in this particular case.

Q. Now, what is the effect, Doctor, of this fracture of her wearing an artificial limb; that is, jolting up and down?

Mr. Baker: We object to that. That has been asked and answered I don't know how many times.

The Court: This witness answered it.

(Testimony of Dr. James Lytton-Smith.)

Mr. Carson: All right, Doctor, in a fracture of a bone of this nature, the hip, what kind of a blow or trauma would it take to make such a fracture?

A. This is a fracture of old age primarily. It usually occurs in people over 70 years of age, at which time we believe the fracture is a result of a twist and then the patient falls, rather than the fall causing the fracture. It is relatively an infrequent fracture in a young individual. The only patients I have ever treated with a fracture of the neck of the femur under 40 years [157] of age have been the result of very severe violence, such as being thrown off of a horse, or a horse rearing over backwards, or falling off of a building, such injuries as that.

Q. Doctor, I think you testified yesterday, if I am not sure, and it was not quite clear to me, but state whether or not she will ever be able to wear an artificial leg.

Mr. Baker: If the Court please, I certainly object to that. It has been asked and answered.

The Court: You may answer.

A. I don't think she could.

The Court: We will have our morning recess at this time. Keep in mind the Court's admonition.

(Thereupon a short recess was taken.)

After recess, all parties being present as noted by the Clerk's records, the trial resumed as follows:

Dr. James Lytton-Smith resumed the witness stand and testified further as follows:

(Testimony of Dr. James Lytton-Smith.)

Direct Examination Resumed

Mr. Carson:

Q. Doctor, will you state whether or not, from your physical findings observed by you and [158] the history of the case given by the patient and the X-rays are consistent with the history given as of the accident as of—the injury having occurred on December 11th, 1942——

Mr. Baker (Interrupting): Wait just a minute, Doctor. Will you read that question?

(The question was read by the Reporter.)

Mr. Baker: It is unintelligible to me. Can you understand that, Doctor?

The Witness: I think I can—I know what he means.

Mr. Baker: I am sure I don't know. I will object to that and ask that it be re-framed.

Mr. Carson: All right, all right. State whether or not the physical findings observed by you and the findings of the X-rays are consistent with the history of the injury as of December 11th, 1942.

Mr. Baker: I object to that, if the Court please. I don't understand exactly the purpose of it. He speaks about the history, the date.

The Court: "Are consistent with the history"? tory"?

Mr. Carson: Are consistent, the injury having occurred——

(Testimony of Dr. James Lytton-Smith.)

Mr. Baker: Well, that has been answered already. [159]

The Court: Yes, I don't believe we will waste any more time.

Mr. Carson: All right, okay. That is all.

Cross Examination

Mr. Baker:

Q. You identified the first one, I believe, that you testified to, as Number 9. A. Yes, sir.

Q. Plaintiffs' Exhibit Number 9 is a photograph that was taken on October 4th, 1943 is that correct? A. Yes.

Q. That was before the time that you performed the operation that you have described, is that correct, Doctor? A. Yes.

Q. Now, you said from this photograph you determined that at the time the photograph was taken on October 4th, 1943, there was a fracture in the femur?

A. I beg your pardon. Do you mean that I determined that from this picture?

Q. Yes. A. Yes.

Q. From the picture? A. Yes. [160]

Q. And will you, with your finger, indicate the line of fracture?

A. Right in through here (indicating).

Q. That is vertical?

A. We call it transverse.

Q. I mean, insofar as the picture is concerned, it is vertical? A. Yes.

(Testimony of Dr. James Lytton-Smith.)

Q. This indicates the fracture right in through here (indicating)? A. Yes.

Q. Now, you said from this picture you could determine that the fracture was not recent, is that true? A. That was my opinion, yes.

Q. And from what did you determine that; that is, what does the picture indicate where you arrived at the result that the fracture was not recent?

A. The X-ray determination of the exact length of time since the fracture, of course, is not possible.

Q. That is what I thought, Doctor.

A. But my interpretation of this being old was based upon the fact that the margins of the fracture are smooth, rounded, no sharp spicules [161] present as you usually see in a fracture, and, furthermore, that the head is slightly more dense than would be expected in a femoral head which is fractured.

Q. In other words, that is all you can determine, was that it was what you physicians call an old fracture and not a recent one?

A. That is correct.

Q. You could not decide whether it occurred two months or two years before that time, could you, before the time the picture was taken?

A. I would say that more than likely more than two months, but I could not say whether it was six months or two years.

Q. You couldn't say whether that fracture occurred six months before that, before the picture was taken, or whether it occurred two years before?

(Testimony of Dr. James Lytton-Smith.)

A. That is correct.

Q. That is correct, isn't it? A. Yes.

Q. And to determine the fact that it was your opinion that the fracture occurred at the same time of this accident in December of 1942, you would have to rely upon the history that the Plaintiff gave you, didn't you? A. Yes. [162]

Q. You can't determine that from the photographs? A. No.

Q. Definitely not. Now, you referred to—this last one which you identified in your direct examination, I believe it was 10 or maybe 11. Eleven, I believe. I believe in testifying as to your findings from this picture, which is Plaintiffs' Exhibit Number 11 in evidence, you stated that that showed the bone graft that you had placed in the hip. It does show the bone graft?

A. It shows what is left of it.

Q. Now, you say that the bone graft that you placed there is fractured? A. Yes.

Q. Can you state what caused that fracture?

A. I think it was from re-absorption.

Q. You say, you think?

A. No, I am not sure what caused the fracture.

Q. You are not sure what caused the fracture?
A fall could have caused it, couldn't it?

A. Possibly.

Q. This picture that you are referring to was taken on January 31st, 1944? A. Yes.

Q. Some months after you had performed

(Testimony of Dr. James Lytton-Smith.)

this [163] bone graft operation, is that true, Doctor?

A. Yes.

Q. And the fracture that is indicated in that picture which you say, does show a fracture, is that right?

A. It shows a fracture, yes.

Q. And that fracture occurred after the time of your operation, didn't it?

A. Yes.

Q. And as you stated, that fracture could well have been caused by a fall?

A. Yes, it could have been.

Q. Now, Doctor, at the time that you examined Mrs. Zane—first, please state the date that you made your first examination of Mrs. Zane.

A. My record shows that I examined her first on September 27th, 1943.

Q. September 27th, 1943?

A. Yes.

Q. You had never seen her before that?

A. No.

Q. And I believe you stated that the occasion for your examination at that time was that she was sent to you by Dr. Ryerson?

A. Referred to me by Dr. Ryerson, yes.

Q. And did Dr. Ryerson give you a history of [164] the case?

A. As I recall, he called me on the 'phone and told me that this patient had a fractured hip and he wanted me to take charge of the treatment.

Q. Did Dr. Ryerson tell you when he first had examined Mrs. Zane for this fractured hip?

A. I don't remember that point?

Q. You don't recall?

A. No.

(Testimony of Dr. James Lytton-Smith.)

Q. As to whether he gave you the history of when he first examined her, you don't know?

A. I would not be certain on that point.

Q. Now, on September 27th, 1943, when you made your first examination, you took no X-rays at that time?

A. No, I had the X-rays which had been taken by Dr. Ryerson.

Q. You had some X-rays that had been taken by him. Now, forgetting those X-rays, which are not here, recite what examination you made of Mrs. Zane at that time.

A. Shall I read from my record?

Q. I am not so particular about the result of your examination, Doctor. What I wish to know is the nature of the examination you made; in other words, what did you do; did you manipulate her [165] limbs?

A. Yes.

Q. That is what I am after.

A. I noted there was an amputation of the right leg below the knee at the so-called site of the election and there appeared to be a moderate amount of genu valgum, knock-knee to the right knee. There was some thickening of the synovia, which is along the knee joint, and there was limitation of extension of the stump; that is, the knee would not completely extend. I noted that the stump was still healed and appeared to be in good condition for application of a prosthesis. I felt a definite crepitus or grating or grinding in the region of the

(Testimony of Dr. James Lytton-Smith.)

right hip, and I noticed that the hip slid up and down, where it should be stationary.

Q. All right. Now, what physical act do you perform to determine this action in a hip that you have described?

A. You put the patient on a table flat on their back and you catch hold of the leg, and I frequently will have the assistant or the nurse do that while I feel over the hip joint, and you can feel when they pull back and forth, you can feel the grinding and grating going on there.

Q. Therefore, it would take no X-ray to [166] determine the fact that there was a fracture of that hip, would there? A. No.

Q. You could determine it by a very simple manipulation of the leg, that is true, isn't it?

A. Yes.

Q. In other words, that was discernible from what you might call just a superficial examination of the bone?

A. That is true. Of course, I had the advantage of having seen the X-rays before and I knew what to look for.

Q. Well, if you didn't have the X-rays, you would determine and come to the same result, wouldn't you? A. I think I would.

Q. Naturally, you would arrive at the same result, that is a fact? A. I think so.

Q. What did you say was wrong with the right knee?

A. There is what we call a flexion tracture. In

(Testimony of Dr. James Lytton-Smith.)

other words, after the amputation of an extremity a flexion may develop in the knee. Now, the hamstring muscles are stronger in back of the knee than the quadriceps muscles, so that the [167] knee tends to pull down and leaves the leg flexed. The quadriceps muscles not being as strong as the hamstring muscles, the knee cannot be fully extended.

Q. So as I understand it from your examination, you are of the opinion that whatever trouble she may have with the right knee was muscular and not bone, is that correct?

A. With the knee, yes.

Q. That is what I am talking about, the knee.

A. Yes.

Q. There were no indications of fractures of the knee at that time?

A. I don't recall having noted any fractures in the knee.

Q. Did you see any X-rays of the knee at that time that you made your examination?

A. I don't believe that I did.

Q. In other words, Dr. Ryerson had made no X-rays of the knee? A. No.

Q. And neither did you? A. No.

Q. The reason for that was, Doctor, you didn't deem it necessary, is that right?

A. That is true. [168]

Q. From your manipulation of the knee and your superficial examination that you made, you came to the conclusion that there was no fracture

(Testimony of Dr. James Lytton-Smith.)

of that knee, and whatever impediment existed was solely muscular, that is true, isn't it?

A. That is correct.

Q. In other words, Doctor, you don't X-ray every part of the body before you undertake to repair an injury, do you? A. No.

Q. You only X-ray that portion of the body which you believe has been damaged or injured, that is true, isn't it? A. Yes.

Q. And for that reason you didn't have any X-ray made of this lady's right knee?

A. There was no complaint from the knee.

Q. No complaint from the knee. Now, was that knee in such a condition at that time that she could have well worn an artificial limb, assuming there was no damage to the hip?

A. I think she could, yes.

Q. In other words, the impediment in the movement of the knee would not impede her use of an artificial limb?

A. It would have been slightly more difficult [169] than if she could have extended fully the knee, but I think she could have easily worn an artificial extremity.

Q. Doctor, have you examined this lady's knee since October, 1943?

A. Yes—wait a minute, I beg your pardon.

Q. Have you examined her right knee since October, 1943?

A. You mean, as to the extension of flexion, and so forth?

(Testimony of Dr. James Lytton-Smith.)

Q. Yes.

A. The last time I examined the patient was on October 30th, 1944. I examined the knee. I have a notation in my file on the examination of the knee on January 17th, 1944.

Q. On January 17th, 1944, and that examination again was without the use of X-rays, is that true?

A. That is correct.

Q. Of the knee, and what did you determine then to be the condition of her right knee?

A. She had flexion contraction then of approximately 20°, and she only had about 40 to 50 degrees motion in the knee.

Q. Was that any different than it was in October, 1943, when you made—September, 1943, when you made your first examination? [170]

A. I am not certain on that point.

Q. Well, from your examination made in January of 1944, that was the date that you recited?

A. January 17th.

Q. 1944? A. Yes.

Q. Would you say then at that time that she had a fracture of the knee?

A. As I recall, she had a history of having had an old fracture in the knee.

Q. Had an old fracture?

A. Of having had an old fracture in the knee.

Q. How old, do you know?

A. I think that she had one at the time of the accident.

Q. At the time of the accident?

(Testimony of Dr. James Lytton-Smith.)

A. That was my understanding. I may be incorrect on that.

Mr. Baker: Mark those for identification, please.

(Thereupon the documents were marked as Defendant's Exhibits F, G, H, I and J for identification.)

Mr. Baker: Handing you Defendant's Exhibit G for identification, which is an X-ray photograph, [171] now, and I assume that was taken on the fifth day of April, 1945. Is that a photograph of the knee? A. Yes.

Q. Does that show a fracture?

A. It shows an old fracture. It shows an old fracture, in my opinion.

Q. How old?

A. I'd want more views than this to base my opinion on.

Q. Here are some more (handing X-ray photographs to the witness).

A. I'd still want more views.

Q. That is all I have. That is a photograph, isn't it? That is not of the knee?

A. No. There is no direct AP or direct lateral taken of this. I believe there is probably an old fracture of the femure at the head and, perhaps, of the lateral condyle, but I would not be sure from these photographs.

Q. But they do show a fracture?

A. I would not be sure, but I think so.

Q. That fracture may have been two months before the picture taken?

(Testimony of Dr. James Lytton-Smith.)

A. Oh, I won't give an opinion on those X-rays.

Q. The only thing you will state, however, [172] is that they do show there was a fracture of the knee on the date when those X-rays were taken.

A. I think so. I would not be sure on that.

Q. That fracture of the knee could have been caused by a fall, of course? A. Oh, yes.

Q. Well, Doctor, a hypothetical question was asked you which recited many facts which I am not going to undertake to try to recite. Perhaps you know, I don't, and you ventured an opinion based—in answer to that question that the fracture of the femur which now is apparent to Mrs. Zane could have occurred at the time of the bus accident on December 11th, 1942, that is correct, is it not?

A. Yes.

Q. And I believe you already testified that to arrive at that conclusion you must assume as true the history of the case as recited by the patent, Mrs. Zane? A. Yes.

Q. And you have also testified to the fact that this fracture was readily discernible without even the use of the X-ray? A. Yes.

Q. That is true, is it not? A. Yes. [173]

Q. The same would have been true immediately after the accident; that is also a fact, is it not?

A. It probably would have been a little more difficult, due to the fact that an old non-union usually does not cause the amount of pain that a recent fracture does. The muscles can be relaxed

(Testimony of Dr. James Lytton-Smith.)

more and there is less swelling so you can palpitate the field easier later on than you can earlier.

Q. But any examination or manipulation of the leg while Mrs. Zane was in the hospital in Indio would have indicated that fracture, in your opinion, is that right?

A. I think it could have been determined, possibly.

Q. Now assuming, Doctor, that you were the physician in attendance in the hospital in Indio when Mrs. Zane was brought there, and assuming that there was a very apparent severe fracture of the leg below the knee that required immediate amputation in order to save her life, and assuming that you, as a physician, did your manipulation of the knee to determine whether there were other fractures and in your opinion there were no other fractures, would you cause any X-ray of the hip to be taken?

A. I certainly would not take X-rays unless [174] I thought they were necessary.

Q. In other words, unless your physical examination or your superficial examination indicated some injury that required an X-ray, you would not X-ray that part of the body? A. No.

Q. You have not heard all of the testimony in this case, have you, Doctor? A. No.

Q. From the testimony it would appear that Dr. Blackman, in the Coachella Hospital in Indio, California, amputated Mrs. Zane's leg on December 11th, 1943, the same day that the accident occurred,

(Testimony of Dr. James Lytton-Smith.)

the amputation being made below the knee; that she was in the hospital then for a matter of six weeks, being lifted in and out of bed, the leg being moved frequently; that is, her right leg, and six weeks after this amputation another operation was performed upon that right leg solely for the purpose of adjusting and fitting the leg to an artificial limb—what is the technical name, by the way, Doctor, for that type of an operation?

A. Repair a stump.

Q. Repair a stump. Assuming those facts to be true, would you say, in your opinion, that this fracture of the hip existed at that time? [175]

A. It could have and certainly should have been noticed.

Q. You say it would have been noticed, wouldn't it?

Mr. Carson: No, he said it should have.

Mr. Baker: It should have been noticed, certainly, and no physician would perform that second operation to repair the stump if there was any indication of a hip fracture, would he?

Mr. Carson: We object, he is assuming a state of facts not in evidence.

The Court: This witness could not tell what any physician would do.

Mr. Baker: What?

The Court: I say, this witness could not tell what any other doctor would do.

Mr. Baker: All right. You would not, would you, Doctor? Under those state of facts, if you

(Testimony of Dr. James Lytton-Smith.)

were Dr. Blackman, you would not have performed that second operation, would you?

A. Not if I knew the hip was fractured.

Mr. Baker: That is right. I think that is all.

Re-Direct Examination

Mr. Carson: [176]

Q. Doctor, when you have a fracture of the hip, the neck of the femur, does it ever show up in the knee, pain in the knee?

A. Diseases of the hip very frequently refer pain to the knee. Most of the children who come in with tuberculosis of the hip complain of the knee before they complain of the hip. Notoriously, the condition of the hip refers pain in the knee. Usually, with a fractured neck of the femur there is pain in the hip also.

Q. Doctor, assuming that Mr. Zane had her right portion of her leg measured for an artificial limb, and assuming the facts to be that the right portion of her leg above the knee was two inches shorter than the left one. That is reported to the doctor. In your opinion, with those facts reported to you, you would have an X-ray made, a picture of the femur bone that fits into the—here at the top (indicating)?

Mr. Baker: Just a minute. We object to that, if the Court please, leading and suggestive, argumentative and not proper re-direct.

Mr. Carson: Well, it certainly is, and it is based

(Testimony of Dr. James Lytton-Smith.)

upon the facts in evidence, Your Honor. There was evidence here introduced yesterday.

The Court: Well, I think that was why [177] X-rays were made, because that was not learned until she returned to Phoenix, was it?

Mr. Carson: I am speaking of Indio. If you will remember the evidence yesterday, there was evidence reported in the record without objection that there was measurements made of this right portion of the leg and it was $21\frac{1}{2}$ inches shorter.

The Court: I know, but she didn't learn that until she reached Phoenix, because the artificial limb was shipped to her in Phoenix.

Mr. Carson: I know, but I am talking about the man that measured it before it was shipped over here, and he reported it to Mrs. Zane.

The Court: All right. When that was learned she went to Dr. Ryerson and Dr. Lytton-Smith.

Mr. Carson: I am talking about over there at Indio. She reported to Dr. Blackman that the man had said over there that probably she had a fractured hip; that is, the man that fitted the artificial limb, and that the right portion was $21\frac{1}{2}$ inches shorter than the left.

The Court: I don't recall whether that was the testimony.

Mr. Carson: Well, that is in the testimony, and if the Court Reporter will refer back to his [178] notes, I am sure that fact was testified to. Did you testify to that, Mrs. Zane?

Mrs. Zane: Yes.

(Testimony of Dr. James Lytton-Smith.)

Mr. Baker: Just a minute. I object to that form of proving——

Mr. Carson: (Interrupting) Well, I'd like to refer to the Court Reporter's notes on it, if he can find it.

Mr. Baker: The question would not be proper even if there was any such condition.

Mr. Carson: It would go to the competency.

Mr. Baker: This is his own witness he is trying to argue with, incompetent.

Mr. Carson: No, no, I am not trying to argue with my witness. You brought out this evidence. It is on re-direct examination, whether or not, after the doctor discovered those facts he should have made an X-ray then of the hip. That is, I am talking about Dr. Blackman. Whether or not all those facts, had been reported to him, whether or not it would have been good medical practice to have it X-rayed. You have a femur bone at the time, after it had been reported to him that she had probably a fracture of the hip, and that portion was 2½ inches shorter than the left. Now, it goes to the question of whether or [179] not the doctor knew, or probably knew, that that hip was fractured, or this femur was fractured, and the question of good faith.

Mr. Baker: He had that included in the long-winded question and the Court let him answer it over my objection.

Mr. Carson: No, it was not included in that question at all.

(Testimony of Dr. James Lytton-Smith.)

Mr. Baker: It was so, and my definite objection was on the ground that it was never proved in evidence any such thing. The Court let him answer.

Mr. Carson: The second portion of that question Mr. Baker objects to. At first he didn't. It was put into the record without objection.

The Court: This is becoming very confusing now. Read the question.

(The question was read by the Reporter.)

The Court: He may answer.

Mr. Baker: There is one statement there, there is no testimony here that anybody ever measured the right leg. The question was that somebody came out and measured her left limb.

Mr. Carson: Do you mean to say, Mr. Baker—

The Court: (Interrupting) You may answer.

A. I think I would have taken an X-ray.

Mr. Carson: That would have been good medical practice to have taken an X-ray?

A. Well, as we look at it now we know it would have been.

Mr. Carson: Doctor, if you were the attending surgeon and pain was reported to you in the upper portion of the leg, serious pain, would you have X-rayed the upper portion of her femur if continual pain had been reported to you?

A. I think I would.

Mr. Carson: I think that is all.

Mr. Baker: You are basing your opinion on what you know now, aren't you, Doctor?

(Testimony of Dr. James Lytton-Smith.)

A. Yes. It is quite obvious she should have had an X-ray.

Mr. Baker: That is all.

(Thereupon the witness was excused.)

JACK ZANE,

having been heretofore duly sworn, resumed the witness stand and testified further as follows:

Mr. Baker: You turn him over for cross examination?

Mr. Carson: Yes. [181]

Cross Examination

Mr. Baker:

Q. Mr. Zane, what is your occupation or profession? A. Electrical work.

Q. And how long have you been engaged in that occupation? A. Close to five years.

Q. Were you engaged in that occupation before Mrs. Zane was injured in this bus accident?

A. Right.

Q. And for how long before that time of the accident had you been so engaged?

A. Well, it would be over two years.

Q. And before the time of this accident what was your average monthly earnings from your work?

Mr. Carson: What does that have to do with it?

(Testimony of Jack Zane.)

The Court: I don't know, perhaps we will find out. Go ahead.

A. Well, that all depends on how much overtime you got then. We got a lot of overtime.

Mr. Baker: Well, what would your average monthly earnings be?

A. I'd say \$90.00 a week.

Q. At the time of the accident you had been [182] engaged in the same occupation?

A. Except the time I have been in the Navy, yes.

Q. Well, excepting the time you have been in the Navy, what has been your average monthly income from your——

A. (Interrupting): Since the time I returned from the Navy?

Q. Yes.

A. Well, about \$70.00 on an average; about \$70.00 a week on the average.

Q. Since the time from the Navy you made less than you did before?

A. That is right. You don't get the overtime you used to get on these jobs.

Q. But you averaged about \$70.00 a week?

A. That is right.

Q. Since the time of the injury? A. Yes.

Q. That is exclusive of the time you were in the service?

A. That is after the time I was in the service.

Q. What period of time were you in the service?

A. Close to eleven months. [183]

(Testimony of Jack Zane.)

Q. And in which service were you?

A. I was in the Navy, in the 5th Amphibious Force.

Q. What was your rating?

A. Seaman First.

Q. When was it you say you first learned of your wife's accident?

A. About six days after it happened.

Q. Where were you then? A. Yuma.

Q. Did you immediately go to Indio?

A. I did.

Q. And when did you arrive in Indio?

A. Early Friday morning. I am pretty sure it was Friday.

Q. Did you see your wife at that time?

A. I didn't get to see her until about—well, sometime in the early morning.

Q. What was her condition when you saw her?

A. She was in a bad fix.

Q. Had her leg been amputated at that time?

A. Yes.

Q. Did you talk with her?

A. Well, I stayed in the room for a few moments.

Q. Was it that same day you say Cameron?

A. No.

Q. When did you see Mr. Cameron?

A. Well, I saw him on the following Sunday.

Q. Did he make any mention of settlement of the case to you at that time? A. No.

(Testimony of Jack Zane.)

Q. None whatever? Never tried to discuss settlement with you at all? A. No.

Q. That is a fact? A. He didn't.

Q. When was the next time you saw Cameron?

A. Well, I don't know. I can only recall sure of twice seeing Cameron.

Q. You can only remember seeing him twice?

A. To be positive.

Q. When was the second time you saw him?

A. That was the day of the settlement.

Q. The day of the settlement. Now, before this day of the settlement had the matter of compensation to be paid to your wife been discussed with you? A. Yes.

Q. Your wife had discussed it with you?

A. Yes.

Q. Did she ever tell you what figure she [185] had arrived at? A. No, she didn't.

Q. She never did? A. Not for certain.

Q. Well, before the day of the settlement you knew what figure she had demanded, did you not?

A. I knew, yes.

Q. You knew she demanded \$15,000.00, is that right? A. Yes.

Q. She had told you before that, that that is what she was asking?

A. Well, she told me just a little before it was signed. I just arrived back from Las Vegas about that time.

Q. Did you object to her accepting that sum?

A. I never objected to her.

(Testimony of Jack Zane.)

Q. How is that? A. I did not.

Q. You never made any objection?

A. I did not.

Q. You thought that was satisfactory, did you not? A. At that time, yes.

Q. And you so told Mrs. Zane, is that right?

A. Not in those words, I didn't. I told [186] her if she was ready to sign it, I was.

Q. It was all right with you?

A. That is right.

Q. Whatever she thought was right you thought it was all right, that is a fact, isn't it?

A. Yes, for the reason, I stated, the way I figured, she was the one that should say yes or no. She was the one that was in the accident, it wasn't me.

Q. You were interested in your son who received some slight injuries, were you not?

A. That is right, and I made settlement for my son myself.

Q. You did that yourself? You got \$500.00 for that? A. Right.

Q. What did you do with that \$500.00?

Mr. Carson: Oh, we object to that.

The Court: That has not been tendered, has it?

Mr. Baker: No.

The Court: Why go into——

Mr. Stahl (Interrupting): It is not involved in this suit at all. That is money that belongs to the child. [187]

Mr. Carson: How could he use his money to

(Testimony of Jack Zane.)

tender to someone else, and that would be very doubtful indeed. Settlement could not be made without the appointment of a guardian, and how could that money be used for tender?

The Court: I will sustain the objection.

Mr. Baker: Well, you were paid \$500.00 on account of the injuries to your son?

A. Right.

Q. You say that was paid direct to you?

A. Right.

Q. That was not paid to your wife?

A. No, it was not.

Q. On this day that the settlement was effected, how long had you been talking to your wife before Mr. Cameron arrived?

A. Well, that is something I really can't answer. I don't know whether he arrived first or whether I did. It was just a short time between the arrival of either one of us.

Q. Now, what was the conversation that occurred at that time?

A. Well, it was about the settlement.

Q. What was the conversation?

A. And papers had been left there to be signed.

Q. Did you see any papers that had been left there? A. Yes, I did.

Q. What were those papers, what did they amount to?

A. Well, the papers that was left there, the best I know—I don't know the reading or anything in it. I know the amount was on it, was \$14,500.00.

(Testimony of Jack Zane.)

Q. All you know is the amount stated was \$14,500.00? A. Yes.

Q. What was the conversation, then?

A. Well, it was just to get down to the settlement. Mr. Cameron was there at the time.

Q. Well, before that time, before that day, had Mrs. Zane stated to Mr. Cameron what she wanted was \$15,000.00?

A. I don't know, I was not there at the time.

Q. Well, was that apparent from the conversation that you had when you were there?

A. That is right.

Q. It was. It was apparent that Mrs. Zane had already submitted her figures to Mr. Cameron?

A. Right. [189]

Q. And that is exactly what he paid her, wasn't it?

A. Well, he paid her fourteen thousand, five hundred.

Q. And \$500.00 for the child.

A. No, I got five hundred for the child.

Q. It was fifteen thousand all together?

A. Well, let's make it fourteen thousand, five hundred for Mrs. Zane.

Q. And \$500.00 for the child?

A. Payable to me.

Q. Yes, payable to you. A. That is right.

Q. Together with the hospital bills and expenses?

A. The hospital bills were brought in on another draft.

(Testimony of Jack Zane.)

Q. Well, that is what Mrs. Zane said she wanted, wanted the hospital bills paid and the expenses paid and fourteen thousand, five hundred.

A. They had made it sure to Mrs. Zane that they were paying the hospital bills.

Q. Well, Mrs. Zane demanded that they pay them, didn't she?

A. No, I don't think she really ever made a demand for that. [190]

Q. Did you ever see that telegram that she sent?

A. I did.

Q. Did you see it at the time she sent it?

A. No, I didn't.

Q. When did you see it?

A. When you had it here.

Q. That is the first time you ever saw it?

A. I didn't see it in my hands. I just heard you talk about it.

Q. She had talked to you about the settlement before she sent the telegram on January 29th?

A. She had talked to me about the settlement.

Q. And had advised you what demand she was going to make?

A. That is right.

Q. And what she told you is the same demand that is made in that telegram?

A. No.

Q. What did she tell you?

A. I believe the last time I talked to her about it, it was they had left a figure of \$12,000.00.

Q. Well, I am not asking you what they said they would pay, but I am asking you what she was going to demand from them.

(Testimony of Jack Zane.)

Mr. Carson: That is, if you know. [191]

A. Well, I really don't know the last demand she was going to make. I was in and out of there and I wasn't with my wife all the time.

Q. You would see her every time you came in?

A. That is right.

Q. And practically every time you came, that you were in Indio, the question of settlement was discussed, was it not?

A. I don't think every time.

Q. All right. Now, getting back to this day of February 19th, 1943, when the settlement was finally effected, you stated that Mr. Cameron was rough, did I understand you? A. He was.

Q. Now, in what respect was he rough?

A. Well, I really couldn't describe it, I guess. Come in there and he was tired of the settlement being delayed; he was sore. I was supposed to be back in Indio.

Q. In other words, he had refused to settle with your wife until you were present, that is a fact, isn't it?

A. No, I don't really think that was the trouble. He had lost enough time on the case, he said, and he would get in trouble with the main office and he was about to lose his job. [192]

Q. Is that the way you express him as being rough?

A. Yes, and he was flying around. He was in quite a stir about it.

Q. In other words, in answer to a question from

(Testimony of Jack Zane.)

counsel you stated he was trying to rush matters, too, is that right?

A. Well, it looked that way.

Q. Will you please tell me why he was so rough and tried to rush you? He was going to pay every dollar she asked and was there with checks to do it.

Mr. Carson: Isn't that rather argumentative, your Honor?

The Court: Yes.

Mr. Baker: It might be argumentative. How long did your wife stay in the hospital after the time of settlement?

A. Two or three weeks. I don't know the date.

Q. You don't know the date. Did you bring her back to Phoenix? A. I did.

Q. You were with her at that time?

A. Right.

Q. When did she get back to Phoenix, do you [193] know?

A. I believe we arrived in Phoenix on the 8th of March.

Q. Was she complaining of any pain when she got back to Phoenix?

A. Yes, she always complained then.

Q. What was her complaint of pain?

A. Pardon me?

Q. What has been her complaint as to pain?

A. Of the hurting of her leg.

Q. Of her leg? A. That is right.

Q. Had she complained continuously?

A. That is right.

(Testimony of Jack Zane.)

Q. Ever since she has been back?

A. Oh, not as often, as often as she used to, but still does.

Q. Now, when was the first time that she ever went to see a physician after she came back to Phoenix?

A. I couldn't swear to that truthfully. I don't know.

Q. You say you don't know?

A. I don't know.

Q. Were you in the Navy in 1943, in August?

A. I was not in the Navy, but I don't know, [194] I might have been out of town. I take on out of town jobs.

Q. You were not in the Navy when she was taken to the hospital here, were you?

A. I didn't say I was.

Q. So you don't know when she first went to a doctor, is that right?

A. No. She might have told me about when she went and I forgot about it.

Q. Do you know why she waited that long before she went to a doctor when she was in continuous pain?

A. I don't know.

Q. You haven't any reason for that at all?

A. Well, one, she got enough of doctors for a while.

Q. Now, when did you first know that your wife had a fractured hip?

A. I believe that was after the first X-rays was taken.

(Testimony of Jack Zane.)

Q. After the first X-rays were taken?

A. Yes.

Q. And when was that, do you know?

A. I can't give any date on that one.

Q. Can't you give any date on that?

A. No. [195]

Q. Well, can you say approximately?

A. No, I can't.

Q. Well, it would have been somewhere in September, 1943? A. Well, I heard it here.

Q. On the stand?

A. The last two or three days. I didn't pay any attention. I don't know what it was.

Q. As far as you know, that is when it was, September, 1943?

A. I know it was after the first X-rays.

Q. That was the first time you ever had taken your wife to a physician, and the first time you knew her hip was fractured?

A. That is right.

Q. After you discovered that her hip was fractured did you ever telephone or talk to Dr. Blackman? A. That is right.

Q. When was that? A. That was after.

Q. Would you say that was in October, 1943?

A. I think that was.

Q. You threatened to sue him for malpractice, didn't you? A. I did not. [196]

Q. You called him on long distance 'phone, did you? A. Yes.

Q. To Dr. Blackman? A. Yes, right.

(Testimony of Jack Zane.)

Q. And you talked to him, did you?

A. Yes.

Q. Didn't you at that time threaten to sue him?

A. No.

Q. What did you tell him?

A. I told him he should be.

Q. You told him he should be sued?

A. That is right, I know.

Q. In other words, you didn't say, "I am going to sue you," but you said he should be sued, is that right?

A. Yes.

Q. And you charged him with malpractice, didn't you?

A. No, sir.

Q. Well, you charged him with the blame for your wife's condition, didn't you?

A. I haven't said it yet.

Q. You recited to him that she had to have an operation, didn't you tell Dr. Blackman? [197]

A. I told him about the operation that was going to be performed. I didn't know then they were going to perform the operation.

Q. You never filed any suit against Dr. Blackman?

Mr. Carson: We object to whether he filed a suit or whether he didn't.

The Court: Well, he said he had not.

Mr. Baker: You didn't attempt to, you never did?

A. Pardon me?

Q. You never sued Dr. Blackman?

Mr. Carson: I object to the question whether

(Testimony of Jack Zane.)

he sued or whether he didn't sue. The question has been asked and answered.

The Court: He answered. He said he didn't.

Mr. Baker: Now, did you at that time or any other time before this suit was filed, ever make any demand upon the Pacific Greyhound Lines on account of your wife? A. No.

Mr. Carson: We object to that. It don't make any difference.

Mr. Baker: Well, that is important.

The Court: Well, he answered.

Mr. Baker: And the first request that was [198] ever made to the Pacific Greyhound Lines was when this suit was filed? A. Right.

Q. This suit was filed on December 9, 1944, is that correct? A. I guess it is.

Q. Why did you wait for that length of time to file the suit against the Greyhound Lines or make any demand upon them?

A. Why couldn't I answer it this way? That I was out of town when it was filed and I didn't file it.

Q. And your suit was filed just two days before the statute of limitations ran.

The Court: Well, he might not know that.

Mr. Carson: He probably didn't know what the statute of limitations was.

The Court: We will suspend until 2 o'clock. Keep in mind the Court's admonition.

(Thereupon a recess was taken at 12 o'clock noon.)

(Testimony of Jack Zane.)

Two o'clock P. M. of the same day, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows: [199]

Jack Zane resumed the witness stand and testified further as follows:

Cross Examination (Resumed)

Mr. Baker:

Q. Mr. Billar, will you give me the last question and answer?

(The last question and answer was read by the Reporter.)

Mr. Baker: Mr. Zane, referring to the time of the settlement that occurred on February 19th, handing you Defendant's Exhibit D in evidence, being a release in full. Is that your signature appended to that (handing document to witness)?

A. Right.

Q. That is your signature, is it not?

A. Yes.

Q. Are those the signatures of the witnesses?

A. Right.

Q. Mr. Cameron was there and also Alpha R. Marcum was there when it was signed?

A. Right.

Q. Handing you Defendant's Exhibit C, being a voucher or a check, together with a receipt and release payable to Zoa Zane and Jack Zane, her husband, in the Coachella Valley Hospital, [200] in the sum of \$14,500.00. Is that your signature to the receipt and release on that?

Mr. Carson: Is that fourteen thousand, five hundred, Mr. Baker?

(Testimony of Jack Zane.)

Mr. Baker: \$14,500.00.

A. Right.

Q. Is that your signature also? A. Right.

Q. On the endorsement on the face?

A. Right.

Q. Is that your signature on the back of it?

A. Yes. I looked at all of them.

Q. I hand you Defendant's Exhibit D in evidence, being a voucher or a check payable to Jack Zane and Zoa Zane, husband and wife, in the Coachella Valley Hospital, and Doctor W. H. Blackman, in the sum of \$1,467.00. Is that your signature on the release and receipt part of that voucher? A. That is right.

Q. Is that your receipt on the endorsement, or your signature, rather, on the endorsement?

A. Right.

Q. Referring to Defendant's Exhibit C, a check for \$14,500.00. What was done with that [201] after it was delivered?

A. It was taken to the bank.

Q. Who took it? A. I did.

Q. And when did you take it to the bank?

A. Well, it was three or four days. I wouldn't make that exact because I don't know.

Q. So Mrs. Zane held that voucher in her possession for three or four days?

A. For a few days?

Q. What bank did you take it to?

A. It was the bank—I think it was the Bank of America.

(Testimony of Jack Zane.)

Q. Did you cash it or deposit it ?

A. Deposited it.

Q. In whose name? A. Zoa Zane.

Q. And how long did that money stay there?

A. Well, it was a \$500.00 deposit. The rest of it was made into Traveler's Checks, or something, the same as that. It was returned to her and the check in the amount of \$500.00 was left, and the balance was drawn out after we came to Phoenix.

Q. So there was \$500.00 deposited in the bank and the rest, you say, was in Traveler's [202] Checks?

A. It wasn't Traveler's Checks, but it was——

Q. (Interrupting): Cashier's Checks?

A. Right.

Q. Something of that sort. Anyway, only \$500.00 was deposited in the bank at Indio? A. Right.

Q. I am handing you Defendant's Exhibit D in evidence. That is a check for \$1,467.00. What was done with that check after it was delivered to you?

A. It was turned over to the hospital.

Q. By you?

A. No, I don't think so. I think Mrs. Marcum picked it up.

Q. You think Mrs. Marcum picked it up?

A. I wouldn't say for certain. I am pretty sure she did.

Q. That was after you and your wife had signed it? A. That is right.

Q. That covered the hospital bill and the doctors', did it not? A. Right.

(Testimony of Jack Zane.)

Q. When you came back to Phoenix who [203] handled the money that was brought back with you?

A. It was deposited in my wife's name here in the bank?

Q. Who made the deposit?

A. My wife did.

Q. You didn't do that yourself? A. No.

Q. Do you know the amount that she deposited there at that time? A. I do not.

Q. You are not familiar with it? A. No.

Q. Deposited it in her name? A. Right.

Q. Not subject to double check; I mean, it was not subject to your check? A. No.

Q. Solely subject to her check?

A. That is right.

Q. After the deposit was made. Are you familiar with any of the expenditures made out of that fund?

A. Oh, I can say a few but not call them off.

Q. I don't know whether you know about this, but to save time of putting you back on the stand, [204] and I don't know what Mrs. Zane will testify. She may testify she does not know about this. Mark these two for identification, please, each one separate.

(The documents were marked as Defendant's Exhibits K and L for identification.)

Mr. Baker: I am handing you this Exhibit marked K for identification payable to Cash, dated April 14th, 1943, \$1,900.00.

A. Yes, I remember that.

(Testimony of Jack Zane.)

Q. What was that for?

A. That was for bonds.

Q. You still got the bonds?

A. I would not say as to that.

Q. Do you know whether or not?

A. I don't.

Q. Do you know whether they have been cashed in?

A. I don't.

Q. That was for bonds?

A. That is right.

Q. For Defense Bonds? A. Yes.

Q. Did you buy them yourself?

A. No, not those.

Q. You didn't buy these, is that right? [205]

A. Well, there is some there that I did. This is Woolworth.

Q. This is not Woolworth, this is to Cash and no endorsement on the check. Apparently it was cashed right there at the bank by whomever it was cashed.

A. Well, they were paid at the bank that we bought the bonds.

Q. April 14th, 1943? A. Yes.

Q. You didn't handle it yourself?

A. Not that one.

Q. You don't know what became of the bonds or where they are now?

A. No; none of my business.

Q. All right. I hand you Defendant's Exhibit L marked for identification, being a check dated February 1st, 1944, in the sum of \$107.50 payable to Wesley Bolin, J of P. Do you know about that?

(Testimony of Jack Zane.)

A. Yes.

Q. What was that for? A. Speeding.

Q. For speeding, and whose fine was it, yours or your wife's? A. It was mine. [206]

Q. That was your fine. You paid a fine of \$107.50, is that correct? A. That is right.

Q. Or, rather, your wife paid your fine?

A. No.

Q. That is her check, is it not?

A. That is right. I paid my own fine.

Q. I hand you a check—do you know George R. E. Milligan?

A. I believe he runs a brake shop down here.

Q. This was cashed in Los Angeles. Do you know anything about that? Maybe that is a brake shop in Los Angeles. I don't know, I am just wondering.

A. Well, I heard her talk of him.

Q. You are not familiar with that check, though. Here is a check payable to Daniel's, \$25.25. Do you know anything about that? A. No.

Q. You don't know anything about that?

A. My wife never *come* asked me every time she wanted to write a check.

Q. There is another check for Daniel's, \$318.75. Do you know anything about that? A. Yes.

Q. What is that?

A. I drew that myself.

Q. Signed by her? A. Yes.

Q. Zoa Zane? A. Right.

Q. And that is dated May 12th, 1943?

A. That is right.

(Testimony of Jack Zane.)

Mr. Baker: I will mark this for identification.

(The document was marked as Defendant's Exhibit M for identification.)

Mr. Baker: The questions I have just asked you refer to Defendant's Exhibit M marked for identification. What does that check represent?

A. I don't know.

Q. I thought you said you did know about that check to Daniel's?

A. I did. \$318.00. I thought that was another one for \$18.75.

Q. No, \$318.75. A. I see it now.

Q. Do you know about that? A. I do.

Q. What is that? A. \$318.75. [208]

Q. I know, what does that represent; what does it represent in the way of a purchase?

A. I got the money off my wife and made a purchase myself.

Q. What did you purchase with it?

A. A ring and a watch.

Q. In other words, that is the Daniel's Jewelry Company, you purchased a ring and a watch?

A. That is right.

Q. You got the money from your wife, is that correct? A. That is right.

Q. Here is a check for \$850.00 payable to Henry Krakower. It says, "Pd. full LaS. sedan." Do you know anything about that check? A. Yes.

Mr. Carson: Your Honor, aren't they going into something that they heard afterwards that has no relation to the question of tender at all?

(Testimony of Jack Zane.)

The Court: I don't think so.

Mr. Baker: Mark this for identification, please. He has identified it.

(This document was marked as Defendant's Exhibit N for identification.)

Mr. Baker: The check that I have just described to you as Defendant's Exhibit N marked [209] for identification, being a check dated August 13th, 1943, in the sum of \$850.00 payable to Henry Krakower——

Mr. Stahl (Interrupting): If the Court please, wouldn't the proper way be to identify the checks and then offer them, rather than reading them before they are admitted?

Mr. Baker: Possibly so. I was just trying to save time. The reason I didn't want to mark them for identification is, he can't identify them. That is the only reason I am doing that. That check, you know about it, do you?

A. That is when she bought her car.

Q. That represents the purchase of a car?

A. Yes.

Mr. Stahl: What was the date of that check?

Mr. Baker: August 13th, 1943. Is Snirr the man you bought the house from? A. Right.

Q. You also bought furniture from him?

A. Right.

Q. This check represents what you paid him for the furniture, is that right?

A. That is right.

Mr. Baker: Mark this for identification, please.

(Testimony of Jack Zane.)

(The document was marked as Defendant's Exhibit O for identification.)

Mr. Baker: Do you know anything about the J. E. Duncan—I will hand you this and ask if you know anything about that? A. No.

Q. You don't know anything about it. Do you know anything about this check? A. No.

Q. You don't know anything about that. Do you know anything about this check? A. Yes.

Mr. Baker: We will mark this for identification.

A. I bought bonds with that.

Mr. Baker: All right.

(The document was marked as Defendant's Exhibit P for identification.)

Mr. Baker: Defendant's Exhibit P for identification which I am handing you, what does that represent? A. Bonds bought at Woolworth's.

Q. You bought Defense Bonds with this?

A. Yes.

Q. Do you still have them?

A. I don't know. It is something that don't [211] belong to me, I am not even interested in it.

Mr. Carson: Mr. Baker, Dr. Palmer is here, could I put him on the stand?

Mr. Baker: Wait a minute, it won't take me very long. Do you know anything about this check?

A. Yes.

Mr. Baker: Mark this for identification, please.

(The document was marked as Defendant's Exhibit Q for identification.)

(Testimony of Jack Zane.)

Mr. Baker: Defendant's Exhibit Q represents what?

A. That was paid for a washing machine?

Q. For a washing machine. Do you know anything about this check? A. Yes.

(The document was marked as Defendant's (Exhibit R for identification.)

Mr. Baker: Defendant's Exhibit R is a check representing what?

A. Furniture bought at the Barrows Furniture Company.

Q. That is in addition to the furniture purchased from Snirr? A. Yes. [212]

Q. Do you know anything about this check payable to you, Jack Zane?

A. I don't recall it, what it was for.

Q. You don't remember anything about that check? A. No, I don't.

Q. Do you know anything about this check payable to Ed Rudolph?

A. Could not be positive, no.

Q. You are not sure about that? Do you know anything about this check I am handing you payable to Daniel's? A. No.

Q. You don't know anything about that? Do you know anything about this check I am handing you payable to Jack Zane?

A. No, I don't know, not for what it is for.

Q. Do you know anything about this check payable to Daniel's? A. No, I don't.

(Testimony of Jack Zane.)

Q. Do you know anything about this check payable to C. P. Stephens?

A. Well, a lot of these checks were made while I wasn't here. How am I going to know what they are for? [213]

Q. I am asking you. I am not arguing with you about it. Do you know anything about this check payable to C. M. Ramsey? A. No.

Q. Do you know anything about this check payable to John Patrick Reilly?

A. Yes. I think that was made when I made an emergency leave home. This work was done on the car.

Mr. Baker: Mark that for identification, please.

(The document was marked as Defendant's Exhibit S for identification.)

Mr. Baker: Defendant's Exhibit S represents what, did you say, a check payable to John Patrick Reilly? A. That was done on the car.

Q. Do you know anything about this check payable to M. R. Brown? A. Yes.

Mr. Baker: Mark this for identification, please.

(The document was marked as Defendant's Exhibit T for identification.)

Mr. Baker: Defendant's Exhibit T for identification represents what? [214]

A. That is a payment for a Ford coupe.

Q. A payment for a Ford coupe?

A. 1926 Ford coupe. It says there, "Payment in full for Ford coupe."

(Testimony of Jack Zane.)

Mr. Baker: Do you wish to put the doctor on now? I am not through cross examining. I am through with this end of it.

Mr. Carson: Yes.

(Thereupon the witness was temporarily excused.)

DOCTOR CHARLES B. PALMER

was called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Carson:

Q. Your name?

A. Charles B. Palmer.

Mr. Carson: Are his qualifications admitted?

Mr. Baker: Yes.

Mr. Carson: You practice medicine and surgery here, Doctor?

A. Yes.

Q. Mrs. Zane, this lady right here, did you ever meet her, Doctor, or have occasion to [215] examine her, Mrs. Zoa Zane? A. Yes, sir.

Q. Do you know when that was or about what time?

A. Well, somewhere in October, 1944, and two or three times since.

Q. Do you remember why she came to see you, or on what occasion?

A. Yes, she came to see me regarding an injury

(Testimony of Doctor Charles B. Palmer.)

that she had sustained, if I remember rightly, in December, 1942, and the—her person and her condition at the time that she came to see me; that is, the fall of 1944.

Q. She came to see you in regard to an examination to see about whether she could bear children or not, or something to that effect?

Mr. Baker: Oh, we object. That is leading and suggestive.

The Court: Yes.

Mr. Carson: Doctor, you made an examination of her did you?

A. Yes, sir.

Q. At that time did she show you some X-rays?

A. Yes, sir.

Q. Now, I am—this is Plaintiffs' Exhibit [216] B in evidence. You look at that, Doctor, do you remember that?

A. Well, I couldn't say whether this is the one, but I have seen similar ones. I should think that this is probably it.

Q. Plaintiffs' Exhibit 3, was that also shown to you at that time?

A. Well, I think that these are the pictures.

Q. Doctor, do you know what those X-ray pictures indicate? Will you look at these X-ray pictures and see what they indicate?

A. Yes, sir. Both pictures are—well, this picture is a picture of the pelvis of this individual. and it shows an injury to the right femur; also shows the left femur which apparently is normal. The

(Testimony of Doctor Charles B. Palmer.)

right femur, my interpretation of it is, that there has been a fracture of the neck of the femur, the right femur, and it is now un-united. I could not tell on that about it being un-united, but I know that from my examination. Also, there are certain changes in the shaft of the right femur which I think are—go along with an injury to the neck of the femur.

This can easily be seen by comparing the normal left femur with the abnormal right femur. [217] The fracture is through the external portion of the neck of the femur and also involves a little bit of the upper end of the femur or thigh-bone.

Q. Now, the interpretation of the other X-ray, Doctor.

A. The other X-ray looks to be a different view of the right femur showing the site of the fracture of the right femur through the outer portion of the neck of the femur. It also appears that it has—shaft of the femur has not united with the head of the femur. Do you want me to tell you a little more about this?

Q. Yes, go right ahead.

A. Of course, I knew at that time that she had been operated on, and as I understand, the object of that operation was to bring the two fragments close together by the implant of bone from another part of her bony skeleton in order to make this femur a continuous bone so there would not be a false joint, an extra false joint there.

(Testimony of Doctor Charles B. Palmer.)

Q. Doctor, did you make any further examinations—did you make an examination of Mrs.—

A. (Interrupting): Yes, I made an examination of her whole body, you might say.

Q. Did you make a vaginal examination? [218]

A. Yes, including a vaginal examination.

Q. Will you tell what you found?

A. Well, I found that she was a pretty healthy woman from examination, which includes the past history. I found that she was the mother of two children. I questioned her to find out if her marital relations were all right—

Mr. Baker (Interrupting): Oh, we object to that, if the court please, purely hearsay.

Mr. Carson: Your Honor, it is a question of damages. We allege that she can't have children and she can't be a normal wife. That was one of the purposes of the examination.

The Court: What do you mean by "marital relations?" That covers a good many things.

Mr. Carson: I beg your pardon?

The Court: I say, what does it mean when he says "marital relations?" It covers a good many things.

Mr. Carson: What do you mean, Doctor, when you say—

A. (Interrupting): Well, she wanted to know if she could have children. That is the gist of the whole matter. I asked her, well, could—

Mr. Baker (Interrupting): I object to [219] what he asked her, the conversation.

(Testimony of Doctor Charles B. Palmer.)

Mr. Carson: Listen, you mean to say the doctor can't ask questions on examination for—make an examination? Your Honor——

The Court (Interrupting): Oh, keep still. What did you tell him——

Mr. Baker (Interrupting): What did he tell her?

The Court: I say, what did you tell her about having children? She wanted to know if she could have children?

The Witness: Yes.

The Court: What did you tell her?

A. I told her I didn't know, that I would have to find out what the difficulty was, by having intercourse, and so forth, and also whether her female sexual organs were competent to go on and have children. I drew my conclusions from my examination and what I asked her.

Mr. Carson: What were your conclusions, Doctor?

A. Huh?

Q. What were your conclusions?

A. Well, my conclusion was that she had a moderate retroflexion of the uterus and that probably she would have difficulty in carrying a child [220] with such disability in her leg, and that sort of thing, because it is pretty hard for a woman to have a baby when she is handicapped by any such thing as that, but I told her that I thought the only way absolutely known was by a trial, but she said that she had——

(Testimony of Doctor Charles B. Palmer.)

Mr. Baker (Interrupting): We object to what she told him, if the Court please.

The Court: All right.

Mr. Carson: What was the Court's ruling?

The Court: Sustained.

Mr. Carson: Doctor, from your examination did you come to any conclusion as to whether or not she could wear an artificial limb?

A. Well, with a false joint in the hip it would be very much more difficult to wear an artificial limb than it would be if you just had a false joint without an amputation below it.

Q. Doctor, assume that this hip here is fractured as you found, what about weight bearing as applied to wearing an artificial limb, as to weight bearing—weight?

A. What was the question?

Q. As to wearing an artificial limb?

Mr. Baker: Oh, he already asked him that, if the Court please. He has answered. [221]

The Court: Read the question.

(The question was read by the Reporter.)

The Court: If you can't answer, just say so.

A. I don't think I can.

Mr. Carson: Well, Doctor, what about weight bearing with a fractured limb, that is, bearing weight on an artificial limb, can you tell us something about that?

A. Well, if your hip is all right and unfractured, it would be much stronger than a hip that was frac-

(Testimony of Doctor Charles B. Palmer.)

tured with an un-united condition as the point of the fracture.

Q. In other words, with a fractured hip it would be rather hard to bear any weight on an artificial limb, isn't that right?

Mr. Baker: That is leading and suggestive, if the Court please.

The Court: Yes.

Mr. Carson: Doctor, state if you can, the difficulty in wearing an artificial limb with a fractured hip?

Mr. Baker: I think that has been asked and answered; asked him his opinion.

The Court: Go ahead and answer it; answer the question. [222]

Mr. Carson: Where there is a dis-united joint?

A. When you have a fractured base or an artificial limb you would have to increase the mobility and it would have a tendency to ride up over the joint where it should be—where the joint should hold it firmly, because all the body weight above would come down and it would sag down and you don't want any sagging down there. That is why you have a bone there, to keep it rigid.

Mr. Carson: That is all.

Cross-Examination

By Mr. Baker:

Q. What date did you make your examination, Doctor; what date did you make your examination?

(Testimony of Doctor Charles B. Palmer.)

A. Well, I would say that it was in October, 1944.

Q. October, 1944? A. Yes, sir.

Q. That is, this past fall? A. Yes, sir.

Q. What date were those X-rays made that you have in your hand?

A. Well, these are 1945—no, I don't know whether it is or not.

Mr. Carson: Let me see the date. [223]

The Witness: Just a minute, I will tell you. These were made June 13th, 1944.

Mr. Baker: June, 1944?

A. Yes, sir.

Mr. Baker: That is all.

A. And this one was made June 13th, 1944.

Mr. Baker: That is all.

Mr. Carson: That is all.

(The witness was excused.)

JACK ZANE

resumed the witness stand and testified further as follows:

Cross-Examination—(Resumed)

By Mr. Baker:

Q. Who is Clara Zane? A. Sister-in-law.

Q. Your sister-in-law? A. Yes.

Q. Married to your brother? A. Right.

Q. Has been employed in your house?

(Testimony of Jack Zane.)

A. She used to be.

Q. She used to be, in what capacity?

A. She kept house for the wife there for a while.

Mr. Baker: I think that is all. [224]

Re-Direct Examination

By Mr. Carson:

Q. Jack you paid your sister-in-law—that last question that was asked, was that while you were in the Navy you hired somebody to come there and work for your wife?

A. Well, that was before and after, too.

Q. Now, Mr. Baker has asked you a question, Mr. Zane, about a conversation, that you called Dr. Blackman in, I think in the fall—sometime in October, 1943. Do you remember why you called over there—why you called him at Indio?

A. Yes, I called him in regards to some X-rays.

Q. What did you ask him about that?

A. If he had them.

Q. What did he say?

A. He said if he had them—he said he didn't have them and if he had them I couldn't get them because it was his property.

Q. You wanted to know if some X-rays had been taken of that hip? A. That is right.

Mr. Carson: I think that is all.

(Thereupon the witness was excused.) [225]

ZOA H. ZANE

resumed the witness stand and testified further as follows:

Re-Cross Examination—(Resumed)

By Mr. Baker:

Q. Mrs. Zane, I am handing you Defendant's Exhibit M for identification, being a check. Do you know of that check? A. Yes, I do.

Q. You executed that check, did you?

A. Yes.

Q. And it is payable to Daniel's?

A. Yes, that is right.

Q. What was the purpose of it?

A. I bought myself and my husband a wrist watch.

Mr. Baker: I offer this in evidence.

Mr. Stahl: What date was that?

Mr. Baker: August 12th, 1943.

Mr. Stahl: No objection.

(The document was received as Defendant's Exhibit M in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT M

Phoenix, Arizona, Aug. 12, 1943

No. 3

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Daniels - - - - - \$318.75

Three Hundred, Eighteen and 75/100 - Dollars

ZOA ZANE

1722 W. Tonto

[Initialed in pencil]: OK Sid

[Stamped on Back of Check]:

Pay to the Order of First National Bank of
Arizona, Head Office, Phoenix 340, Jewelry Com-
pany.

Mr. Baker: I hand you a check, Defendant's
Exhibit K marked for identification, in the sum of
\$1,900.00 Do you know of that check?

A. Yes, sir.

Q. That was payable to Cash, was it? [226]

A. Yes.

Q. And what was done with that money?

A. Well, some bonds were bought with it.

Q. Where are those bonds?

A. I still have some of them.

Q. How much were they?

A. I don't know whether the ones I have were
bought on this day or some later day.

(Testimony of Zoa H. Zane.)

Q. How many dollars worth of bonds do you have now at the present time?

A. Oh, I think I have two \$1,000.00 bonds.

Q. Two \$1,000.00 bonds? A. Yes.

Q. You never cashed? A. No.

Mr. Baker: We offer this in evidence.

Mr. Stahl: What was the date of that?

Mr. Baker: August 14th, 1943.

(The document was received in evidence as Defendant's Exhibit K.)

DEFENDANT'S EXHIBIT K

Phoenix, Arizona, April 14, 1943

No. 6

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Cash - - - - - \$1900.00

One Thousand and Nine Hundred - - Dollars

ZOA ZANE

The Witness: That was April, wasn't it?

Mr. Baker: You are right. It was April 14th—excuse me. I hand you Defendant's Exhibit L marked for identification, a check payable to Wesley Bolin. Do you know about that check?

A. Yes. [227]

Q. What was that for?

A. Jack got picked up for speeding.

(Testimony of Zoa H. Zane.)

Q. That check was for the sum of \$107.50, is that right? A. Yes.

Q. Dated February 1, 1944, is that correct?

A. Yes.

Mr. Baker: We offer that in evidence.

DEFENDANT'S EXHIBIT L

Phoenix, Arizona, Feb. 1, 1944

No. 7

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Wesley Bohn, J. of P. - \$107.50

One Hundred and Seven and 50/100 - - Dollars

ZOA ZANE

[Stamped on Back of Check]:

Pay to First National Bank of Arizona, Phoenix, Arizona, on Order Wesley Bohn, Justice of the Peace, West Phoenix Precinct.

Mr. Stahl: I don't have any particular objection, however, if the Court please, I think the allegations of our complaint in reference to tender were simply to the effect that prior to discovery of this injury she spent a portion of this money and it was necessary for her to spend some of it in connection with that, in connection with her injuries, and that she was unable to tender. Whether it is material to go into all of these matters to show how she spent

(Testimony of Zoa H. Zane.)

all of this money, except she spent an amount that she could not be able to make a tender of \$14,500.00.

The Court: It is hard to know where to draw the line.

Mr. Stahl: Of course, in addition to that, in the matter of tender, Your Honor, it was held that it was really unnecessary in a case of this kind. For instance, in the Peterson case decided [228] in the Supreme Court here, it was stated there was no tender required in a case of this nature only in the case of fraud.

The Court: You have alleged it here for your purpose, now Mr. Baker can go ahead and try his case the way he wants to.

Mr. Baker: I hand you Defendant's Exhibit N marked for identification, being a check dated August 13th, 1943, payable to Henry Krakower, in the sum of \$850.00. Do you know anything about that?

A. Yes.

Q. What was that for?

A. This was for the LaSalle.

Q. LaSalle automobile? A. Yes.

Q. A new one? A. No.

Q. Second-hand one? A. Yes, sir.

Mr. Baker: Mark that in evidence.

(The document was marked as Defendant's Exhibit N in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT N

Phoenix, Arizona, Aug. 13, 1943

No. 5

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Henry Krakower - - \$850.00

Eight Hundred and Fifty and no/100 - Dollars

ZOA ZANE

[Written in margin]: Pd. full LaS. Sedan.

[Endorsed on back]: Henry Krakower.

Mr. Stahl: What date?

Mr. Baker: August 13th, 1943. I hand you Defendant's Exhibit O marked for identification, [229] being a check dated August—well, just August is all—194— I don't know, it has no date on it. Do you know that check?

A. Yes.

Q. That was for the furniture that you paid to Mr. Snirr whom you bought your house from?

A. Yes.

Q. In the sum of \$650.00? A. Yes.

Q. You bought the house and also the furniture?

A. It was listed together as one price.

Mr. Baker: I offer that in evidence. Do you know what date that is?

A. I think that is supposed to be August the 2nd.

Mr. Baker: You think August the 2nd?

(Testimony of Zoa H. Zane.)

A. Yes, August 1st or 2nd.

Q. 1943? A. Yes.

Mr. Stahl: And the amount?

Mr. Baker: \$650.00.

Mr. Stahl: No objection.

(The document was marked as Defendant's Exhibit O in evidence.)

Mr. Baker: I hand you Defendant's Exhibit [230] P marked for identification. Do you know that check?

A. Yes, sir.

Q. That was to Woolworths? A. Yes.

Q. That was for bonds? A. Yes.

Q. In the sum of \$975.00? A. Yes

Q. Do you have those bonds, or do you know?

A. I may have some of them.

Mr. Baker: We offer this in evidence.

(The document was marked as Defendant's Exhibit P in evidence.)

DEFENDANT'S EXHIBIT P

Phoenix, Arizona, Sept. 17, 1943

No. 8

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of F. W. Woolworth - \$975.00

Nine Hundred and Seventy Five - - - Dollars

ZOA ZANE

[Endorsed on Back]: F. W. Woolworth—
Juanita Crouch. Bonds

(Testimony of Zoa H. Zane.)

Mr. Baker: Defendant's Exhibit Q marked for identification, being a check dated December 20th, 1944, payable to Mrs. B. B. Henry, in the sum of \$87.00, what is that, Mrs. Zane?

A. That was for a washing machine.

Q. That was for a washing machine?

A. Yes.

Mr. Baker: Unless you want that in evidence, I am not interested in the washing machine.

Mr. Carson: They are hard to get hold of, Mr. Baker.

Mr. Baker: I am not offering this in [231] evidence. Handing you Defendant's Exhibit Number T for identification, being a check dated April 23rd—is that 1943?

A. 1945.

Q. 1945? A. Yes.

Q. Payable to M. R. Brown, in the sum of \$385.00. What was that for?

A. V-8 coupe.

Q. Another automobile? A. Yes.

Mr. Stahl: What was the date?

Mr. Baker: April 23rd, 1945, payable to M. R. Brown in the sum of \$385.00.

(The document was marked as Defendant's Exhibit T in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT T

Phoenix, Arizona, April 23, 1945

No. 5

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of M. R. Brown - - - \$385.00

Three Hundred and Eighty-Five - - - Dollars

ZOA ZANE

Full payment on '36 V-8 Coupe.

[Endorsed on Back]: Malwin R. Brown

Mr. Baker: I hand you Defendant's Exhibit S marked for identification, being a check dated January 14th, 1945, payable to John Patrick Reilly in the sum of \$73.15. What was that for?

A. For mechanical work.

Q. On an automobile? A. Yes.

Mr. Baker: We offer that in evidence.

(The document was marked as Defendant's Exhibit S in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT S

Phoenix, Arizona, Jan. 14, 1945

No. 21

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of John Patrick Reilly - \$73.15
Seventy-Three and 15/100 - - - - - Dollars
ZOA ZANE

[Endorsed on back]: John Patrick Reilly.

Mr. Baker: I hand you Defendant's Exhibit R for identification, being a check dated October 11th, 1943, payable to Barrows Furniture Company, in the sum of \$200.00. That was for furniture?

A. Yes.

Mr. Baker: I offer that in evidence.

(The document was received and marked as Defendant's Exhibit R in evidence.)

Mr. Baker: Is this check I am handing you for Milligan and Company, is that for your artificial limb, in Los Angeles? A. Yes.

Q. \$275.00 you paid for that? A. Yes.

Q. You stated that you didn't see a doctor after you returned to Phoenix until August of 1943, when you went to Dr. Ryerson? A. That is right.

Q. I hand you a check dated March 24th, 1943, payable to P. M. Ryerson, and ask you to look at that please. A. Yes, I remember that.

(Testimony of Zoa H. Zane.)

Q. Was that in payment for his services?

A. Not to me, to the baby. He had gatherings in his head.

Q. That was for the baby, not for you. I [233] hand you a check payable to Daniel's in the sum of \$25.25. Do you know about that check?

A. Oh, it was probably for Mother's Day present. It was around that time.

Q. For jewelry? A. Probably.

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was marked as Defendant's Exhibit Q in evidence.)

DEFENDANT'S EXHIBIT U

Phoenix, Arizona, May 6, 1943

No. 9

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Daniels - - - - - \$25.25

Twenty-five and 25/100 - - - - - Dollars

ZOA ZANE

[Initialed in pencil]: OK SHS #30207—Cash.
1921 E. Portland

[Stamped on back of check:]

Pay to the Order of First National Bank of Arizona, Head Office, Phoenix 340, Daniels Jewelry Company.

(Testimony of Zoa H. Zane.)

Mr. Baker: This check I hand you for \$4,300.00, I presume, was in payment for your house, is that correct?

A. Yes.

Q. That is the time you purchased the house, on August 2nd, 1943? A. Yes.

Q. For \$4,300.00?

A. Well, it was listed with the furniture included, which made it \$4,950.00.

Q. I hand you a check payable to J. E. Duncan. I will ask, who is J. E. Duncan?

A. Well, I bought a sewing machine from them.

Q. A sewing machine? A. Yes. [234]

Mr. Baker: I am not interested in sewing machines. I hand you a check dated September 2nd, 1943. Who was that payable to? I can't quite make it out. A. Mrs. W. T. Brunlow.

Q. What was that check for? A. It was a loan.

Q. You loaned her the sum of \$400.00, is that correct? A. Yes.

Q. With this check? A. Yes.

Q. Who is she? A. She was a friend.

Mr. Baker: We offer this in evidence.

Mr. Stahl: What is the date of that?

Mr. Baker: September 2nd, 1943, payable to Mrs. W. T. Brunlow, \$400.00, which she says is a loan.

(The document was marked as Defendant's V in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT V

Phoenix, Arizona, Sept. 2, 1943

No. 20

91-1

Head Office

91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Mrs. W. T. Brunlow - \$400.00

Four Hundred and no/00 - - - - - Dollars

ZOA ZANE

[Endorsed on back]: Credited to Account of W. T. Brunlow, First National Bank of Arizona 2, Phoenix, Arizona. Showalter, Teller.

Mr. Baker: Handing you a check payable to Jack Zane, dated November 22nd, 1943. Do you know anything about that?

A. No, I don't recall what it was for. To pay some bills, I suppose. It was while I was in bed at the time. [235]

Q. This was payable to Jack Zane in the sum of \$300.00? A. Yes.

Q. You can't recall the purpose?

A. The purpose it was put to, no.

Mr. Baker: We offer it in evidence for what it is worth.

Mr. Stahl: The check is dated the 22nd of November.

(The document was received as Defendant's Exhibit W in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT W

Phoenix, Arizona, Nov. 22, 1943

No. 13

91-1

Head Office

91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Jack Zane - - - - \$300.00

Three Hundred and no/00 - - - - Dollars

ZOA ZANE

[Endorsed on back]: Jack Zane.

Mr. Baker: A check payable to Ed Rudolph in the sum of \$50.00. Do you know anything about that?

A. Yes.

Q. What is that?

A. A paint job on the LaSalle.

Q. A paint job on the LaSalle? A. Yes.

Mr. Baker: We offer that in evidence, dated December 1, 1943, payable to Ed Rudolph, \$50.00.

(The document was received as Defendant's Exhibit X in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT X

Phoenix, Arizona, Dec. 1, 1943

No. 18

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Ed Rudolph - - - - \$50.00

Fifty and no/00 - - - - - Dollars

ZOA ZANE

[Endorsed on back]: Pay to First National Bank of Arizona, Phoenix, Arizona, or Order. Edw. Rudolph.

Mr. Baker: Here is another check to Daniel's. Do you know anything about that check?

A. No, I don't recall what that is for. [236]

Q. Well, that is a jewelry firm—store, is that right? A. Yes.

Mr. Baker: We offer this in evidence.

A. They also do repair work and sell dishes and furniture or silverware.

Mr. Baker: Dated December 23rd, 1943, payable to Daniel's, in the sum of \$15.00.

(The document was received as Defendant's Exhibit Y in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT Y

Phoenix, Arizona, Dec. 23, 1943

No. 13

91-1 Head Office 91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Daniels - - - - \$15.00
Fifteen and no/00 - - - - - Dollars

ZOA ZANE

[Endorsed on back of check:]

Pay to the Order of First National Bank of
Arizona, Head Office, Phoenix 340, Daniels Jewelry
Company.

Mr. Baker: Here is another check to Jack Zane.
Do you know what that was for?

A. No.

Q. Huh? A. No.

Q. That is payable to your husband in the sum
of \$45.00, is it? A. Yes.

Mr. Baker: We offer this in evidence, a check
dated March 6, 1944, to Jack Zane, \$45.00. That
is while you were still in the Indio—no, that was
after you returned, excuse me.

(Thereupon the document was received as
Defendant's Exhibit Z in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT Z

Phoenix, Arizona, Mar. 6, 1944

No. 22

91-1

Head Office

91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Jack Zane - - - \$45.00

Forty-Five and no/00 - - - Dollars

ZOA ZANE

[Endorsed on back]: Jack Zane.

Mr. Baker: Here is another check on Daniel's in the sum of \$63.00. Do you know what that is?

A. No, I don't recall.

Q. Dated August 9th, 1944. That is the date, isn't it (showing document to witness)?

A. Yes.

Q. And that is the Daniel's store down here at Phoenix?

A. Yes.

Mr. Baker: We offer that in evidence.

(The document was received and marked Defendant's Exhibit AB in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT AB

Phoenix, Arizona, Aug. 9, 1944

No. 4

91-1

Head Office

91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of Daniels - - - - \$63.00

Sixty-three and no/00 - - - - Dollars

ZOA ZANE

[Stamped on back of check:]

Pay to the Order of First National Bank of
Arizona, Head Office, Phoenix 340, Daniels Jewelry
Company.

Mr. Baker: Here is a check payable to C. P.
Stephens in the sum of \$259.63. Do you know that
check?

A. Yes, I sold the LaSalle and bought a Ford
from him.

Q. So that is still another car involved?

A. Yes, but I sold the LaSalle before I bought
this.

Q. That was the difference you paid?

A. No, that was what I paid.

Q. For the Ford? A. Yes.

Q. Well, you sold the LaSalle and then bought
the Ford, is that what you did? A. Yes.

Mr. Baker: We offer this in evidence. [238]

(The document was received and marked as
Defendant's Exhibit AC in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT AC

Phoenix, Arizona, Aug. 17, 1944

No. 4

91-1

Head Office

91-1

Washington at First Avenue

First National Bank of Arizona

Pay to the Order of C. P. Stephens - - \$259.36

Two Hundred, Fifty-nine and 36/00 - - Dollars

ZOA ZANE

[Stamped on back of check:]

Pay to the Order of the Valley National Bank,
Phoenix, Arizona, for Deposit to the Credit of
C. P. Stephens.

Mr. Baker: Here is E. M. Ramirez.

A. He put a top on the Ford for me.

Q. You handed me statements. I assume you have examined them, have you, the bank statements?

A. Yes. I don't think that is quite all of them, but I didn't have time last night to hunt around for all of them.

Q. They seem to be fairly complete; one or two missing.

A. Yes.

Q. But you have examined them and that fairly and accurately portrays your bank account, does it, from the time you came back from Indio up to this date?

A. Yes, the first one and the last statement.

(Testimony of Zoa H. Zane.)

Mr. Baker: We offer these in evidence.

Mr. Carson: I think they are wholly incompetent, a whole bunch of bank statements, because a man who is working, evidently he is working and puts a part of the money he makes in the account and it is carried over a period of time, why, even after the suit is filed. It is immaterial to put all of that stuff in. It should [239] not have any probative effect.

Mr. Baker: I think it has a very definite probative effect, because you didn't object to me interrogating the witness until they were offered in evidence. I will show you whether they have probative effect or not.

The Court: Well, they may be received, they may be received.

(The documents were received as Defendant's Exhibit AD in evidence.)

(Testimony of Zoa H. Zane.)

DEFENDANT'S EXHIBIT AD

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizon

Statement of Account with

(MRS.) ZOA ZANE

1921 E. Portland, Phoenix, Ariz.

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
			13,896.65
Mar 22 '43	13,896.65	25.00—	
Mar 23 '43	13,871.65	25.00—	
Mar 24 '43	13,946.65	35.00—	
Mar 27 '43	13,811.65	13.50—	
			<hr/> Balance 13,798.15

Vouchers Returned: 4

Count Verified by: C

Please examine this statement at once. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1921 E. Portland, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Apr 6 '43	13,798.15	55.00—	
Apr 14 '43	13,743.15	1,900.00—	
Apr 26 '43	11,843.15	10.00—	
[Figures in longhand] :			
	33		
	833.15		
	35.25		
	<hr/>		
	11,797.90		
	1,797.90	Zoa Zane	
	Zoa Zane	140	
		275	14,500.00
			<hr/>
		Balance	11,833.15
<hr/>			
		[Figures in pencil] :	2,666.85
			1,875
			<hr/>
			791.85

HEAD OFFICE
FIRST NATIONAL BANK OF ARIZONA
 PHOENIX, ARIZONA

Zoe Zane
1921 E. Portland
Phoenix, Arizona

STATEMENT OF
 ACCOUNT WITH

DATE		OLD BALANCE	CHECKS LISTED IN ORDER OF PAYMENT—READ ACROSS	DEPOSIT
MAY	7'43	11,833.15	10.00 -	
	7'43	11,823.15	25.25 -	
		11,797.90	20.00 -	
		11,777.90	10.00 -	
		767.90	15.00 -	
BALANCE				11,737.90

VOUCHERS RETURNED 6
 COUNT VERIFIED BY ✓

TOTAL

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1921 E. Portland, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Jun 8 '43	11,737.90	15.00—		
Jun 21 '43	11,722.90	28.00—		
Jun 22 '43	11,694.90	5.00—		
Jun 23 '43	11,689.90	10.50—		
Balance				11,679.40

Vouchers Returned: 4

Count Verified by: √

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1617 W. Van Buren, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Jul 7 '43	11,679.40	14.26—	20.00—	
Jul 8 '43	11,645.14			69.17
Jul 12 '43	11,714.31	15.00—		
Jul 13 '43	11,699.31	16.00—		
Jul 13 '43	11,683.31	10.00—	80.00	54.61
Jul 14 '43	11,647.92	10.00—	10.00—	
Jul 15 '43	11,627.90	10.00	—	
Jul 20 '43	11,617.92	25.00—	110.00	
Jul 20 '43	11,592.92			

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Jul 20 '43	11,592.92		45.72
Jul 24 '43	11,638.64	25.00—	
Jul 26 '43	11,613.64	20.00—	
Jul 26 '43	11,593.64		61.50
Jul 27 '43	11,633.14	20.00—	
Jul 30 '43	11,635.14	10.00—	
		<hr/>	<hr/>
		* 175.26	* 231.00
		110	
		<hr/>	
		285.26	

Balance 11,625.14

Vouchers Returned: 14

Count Verified by: J

* Figures in longhand.

[Figures in longhand, reverse side of Statement] :

2
80
10
20
25
20
25
10
10
10
14.26
20
15
16
10
<hr/>
285.26
231.00
<hr/>
54.26

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1702 W. Tonto, City

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across			Deposits
Aug 2 '43	11,625.14	25.00—			
Aug 2 '43	11,600.14	650.00—			
Aug 3 '43	10,950.14	4,300.00—			
Aug 4 '43	6,650.14	10.00—			
Aug 9 '43	6,640.14	68.70—			
Aug 10 '43	6,571.44	15.00—	20.70—	30.00—	
Aug 10 '43	6,505.74	25.00—			
Aug 13 '43	6,480.74	318.75—			
Aug 14 '43	6,161.99	850.00—			
Aug 16 '43	5,311.99	48.25—	20.00—		
Aug 17 '43	5,243.74	53.35—	20.00—		
Aug 19 '43	5,170.39	10.00—	5.00—		
Aug 21 '43	5,155.39	10.00—			11625.14*
Aug 23 '43	5,145.39	1.83—	4.55—		5044.08*
Aug 23 '43	5,139.01	8.51—			
Aug 25 '43	5,130.50	15.00—			6581.06'
Aug 26 '43	5,115.50	15.00—			4950. *
Aug 27 '43	5,100.50	30.00—			
Aug 27 '43	5,070.50	26.42—			1631.06*
Balance					5,044.08

Vouchers Returned: 25

Count Verified by: J

* Figures in longhand.

[Figures in longhand, reverse side of Statement]

400.	5044.08	14500.
5.	515.	5429.08
10.		
100.	4529.08	2970.92
		5000.
515.		
		4970.92

HEAD OFFICE
FIRST NATIONAL BANK OF ARIZONA
PHOENIX, ARIZONA

STATEMENT OF
ACCOUNT WITH

Zea Zano
1722 W. Tonto St.
Phoenix, Arizona

DATE	OLD BALANCE	CHECKS LISTED IN ORDER OF PAYMENT—READ ACROSS	DEPOSITS
SEP 28 '43	3,407.46	15.00-	
SEP 28 '43	3,392.46	40.00-	41.70
SEP 30 '43	3,394.22	15.00- 298-	61.50
	100. 4.00 85. 9.75 87 8.95	5044.88 3407.46 <u>1636.62</u> 16.05	28.4 61.50 203.1
	1605.95	5044.08 3376.24	1605.95 203.
	14.40 4.01 50 1.66 106.66	1667.84 1605.95 <u>61.89</u>	1-
		3376.24 166.06 <u>3270.18</u>	
		BALANCE	3,376.2
		VOUCHERS RETURNED	4
		COUNT VERIFIED BY	u

PLEASE EXAMINE THIS STATEMENT AT ONCE. IF NO ERROR IS REPORTED IN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT. ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT.

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across			Deposits
Sep 1 '43	5,044.08	100.00—			
Sep 3 '43	4,944.08	400.00—			
Sep 4 '43	4,544.08	10.00—			
Sep 7 '43	4,534.08				61.50
Sep 8 '43	4,595.58	25.00—	5.00—		
Sep 9 '43	4,565.58	.88—			
Sep 9 '43	4,564.70	10.00—			
Sep 10 '43	4,554.70	35.00—			
Sep 12 '43	4,519.70	35.00—			
Sep 14 '43	4,484.70	15.00—	15.00—		
Sep 15 '43	4,454.70				38.40
Sep 17 '43	4,493.10	25.00—	5.00—	975.00—	
Sep 20 '43	3,488.10	10.00—			
Sep 20 '43	3,478.10	2.00—			
Sep 22 '43	3,476.10	87.00—			61.50
Sep 23 '43	3,450.60	15.00—	10.00—		
Sep 23 '43	3,425.60	9.19—			
Sep 25 '43	3,416.41	8.95—			
Balance					3,407.46

Vouchers Returned: 21

Count Verified by: PM

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Oct 1 '43	3,376.24	12.25—	
Oct 2 '43	3,363.99	50.00—	
Oct 4 '43	3,313.99	14.40—	
Oct 7 '43	3,299.59	10.00—	
Oct 10 '43	3,289.59	1.66—	
Oct 13 '43	3,287.93	200.00—	
Oct 20 '43	3,087.93	25.00—	
Oct 23 '43	3,062.93	135.10—	
Oct 29 '43	2,927.83	20.00—	1.98—
			Balance 2,905.85

Vouchers Returned: 10

Count Verified by: C

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Nov 1 '43	2,905.85	45.00—	
Nov 1 '43	2,860.85		35.00
Nov 1 '43	2,895.85		56.07
Nov 2 '43	2,951.92	7.41—	

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Nov 3 '43	2,944.51	19.00—		
Nov 4 '43	2,925.51	200.00—		
Nov 6 '43	2,725.51	11.01—		
Nov 10 '43	2,714.50	7.32—		
Nov 19 '43	2,707.18	1.77—		
Nov 20 '43	2,705.41	35.00—		
Nov 22 '43	2,670.41	12.50—		
Nov 22 '43	2,657.91	300.00—		
Nov 24 '43	2,357.91	14.71—		
Nov 24 '43	2,343.20	15.00—	45.00—	
Nov 27 '43	2,283.20			35.00
Nov 29 '43	2,318.20	13.53—		
Nov 30 '43	2,304.67	21.00—	10.00—	
Nov 30 '43	2,273.67			24.74

[Figures in longhand] : 150.11

Balance 2,298.41

Vouchers Returned: 16

Count Verified by: J

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

[Figures in longhand] :

ZOA ZANE	381.73
1722 W. Tonto	172.31
Phoenix, Arizona	209.42

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Dec 1 '43	2,298.41	23.79—	
Dec 1 '43	2,274.62	3.60—	
Dec 3 '43	2,271.02	50.00—	
Dec 4 '43	2,221.02	50.00—	
Dec 10 '43	2,171.02	40.00—	11.60—

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Dec 11 '43	2,119.42	38.29—	
Dec 14 '43	2,081.13	40.50—	
Dec 15 '43	2,040.63	3.41—	
Dec 16 '43	2,037.22	55.00—	
Dec 17 '43	1,982.22	5.50—	
Dec 18 '43	1,976.72		36.32
Dec 20 '43	2,013.04	15.00—	
Dec 23 '43	1,998.04	12.50—	
Dec 27 '43	1,985.54	15.00—	40.27
Dec 28 '43	2,010.81	49.56—	
Dec 29 '43	1,961.25	3.65—	
Dec 30 '43	1,957.60	10.87—	
Dec 30 '43	1,946.73		35.00

 Balance 1,981.73

 [Figures in longhand] : 16

 381.73

Vouchers Returned: 17

Count Verified by: J

[Figures in longhand, reverse side of Statement] :

750	1981.73
18	93
30	<hr/>
250	1888.73
35,	200
<hr/>	<hr/>
93.00	1688.73
	1888
	1650.
	<hr/>
	238

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

State of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Feb 1 '44	220.10	43.48—		
Feb 2 '44	176.62			12.00
Feb 3 '44	188.62			35.00
Feb 5 '44	223.62			1,000.00
Feb 7 '44	1,223.62	107.50—		
Feb 9 '44	1,116.12	1.66—		
Feb 9 '44	1,114.46	1.77—		
Feb 10 '44	1,112.69	11.21—		
Feb 11 '44	1,101.48	10.00—	20.00—	
Feb 12 '44	1,071.48	10.00—		
Feb 16 '44	1,061.48	40.00—		
Feb 17 '44	1,021.48			
Feb 17 '44	1,021.48	25.00—		
Feb 21 '44	996.48	15.00—		
Feb 23 '44	981.48	12.09—	5.00—	
Feb 24 '44	964.39	10.00—		
Feb 26 '44	954.39	25.00—		
Feb 28 '44	929.39	25.00—		
Feb 29 '44	904.39	10.00—		
Balance				894.39

Vouchers Returned: 17

Count Verified by: B

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office
FIRST NATIONAL BANK OF ARIZONA
Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date		Old Balance	Checks—Listed in Order of Payment—Read Across			Deposits
Mar	1 '44	894.39	25.00—			
Mar	1 '44	869.39	2.75—	11.63—		
Mar	2 '44	855.01				35.00
Mar	7 '44	890.01	25.00—			
Mar	7 '44	865.01	45.00—			
Mar	9 '44	820.01	30.00—			
Mar	16 '44	790.01	25.00—			
Mar	16 '44	765.01	1.87—			
Mar	17 '44	763.14	13.52—			
Mar	18 '44	749.62	11.01—			
Mar	20 '44	738.61	25.00—			
Mar	20 '44	713.61	25.00—			
Mar	24 '44	688.61	35.74—			
Mar	27 '44	652.87	30.00—			
Mar	29 '44	622.87	11.02—	2.22—	15.00—	
Mar	30 '44	594.63				100.00
Mar	31 '44	694.63	10.00—			
			<hr/> 344.76*			
		894.36*				
		684.63*				
		<hr/> 209.73*				
		135. *				
		<hr/> 344.73*				
						<hr/> Balance 684.63

Vouchers Returned: 18

Count Verified by: W

* Figures in longhand.

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Jun 3 '44	331.84		35.00
Jun 7 '44	366.84		100.00
Jun 8 '44	466.84	25.00—	
Jun 12 '44	441.84	2.29—	
Jun 13 '44	439.55	40.00—	
Jun 14 '44	399.55	1.66—	
Jun 17 '44	397.89	7.58—	
Jun 26 '44	390.31	30.00—	
Jun 29 '44	360.31	5.81—	
Balance			354.50

Vouchers Returned: 7

Count Verified by: C

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Jul 1 '44	354.50	21.11—	
Jul 10 '44	333.39	25.00—	
Jul 10 '44	308.39		35.00
Jul 24 '44	343.39	53.35—	
Jul 29 '44	290.04	20.00—	
Balance			270.04

Vouchers Returned: 4

Count Verified by: C

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office
 FIRST NATIONAL BANK OF ARIZONA
 Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Aug 1 '44	270.04	9.46—		
Aug 2 '44	260.58	25.00—		
Aug 5 '44	235.58			106.45
Aug 8 '44	342.03	3.39—		
Aug 11 '44	338.64	63.00—		400.00
Aug 19 '44	675.64	259.36—		
Aug 22 '44	416.28	30.00—		
Aug 31 '44	386.28	65.00	6.78—	
	509*			
	776.49*			506.45*
	314.50*			
	461.99*			
			Balance	314.50

Vouchers Returned: 8

Count Verified by: C

* Figures in longhand.

[Figures in longhand, reverse side of Statement]

46.78

65.

230.

259.36

63.

3.39

9.46

25

461.99

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Sep 1 '44	314.50	6.07—	
Sep 4 '44	308.43	25.00—	
Sep 4 '44	283.43		35.00
Sep 7 '44	318.43	4.75—	100.00
Sep 12 '44	413.68	23.31—	
Sep 13 '44	390.37	5.07—	
Sep 15 '44	385.30	25.00—	
Sep 18 '44	360.30	10.00—	
Sep 19 '44	350.30	35.00—	
Sep 25 '44	315.30	1.98—	
Sep 27 '44	313.32	35.00— 8.73—	
Sep 29 '44	269.59	13.88—	

3*

Balance 255.71

Vouchers Returned: 12

Count Verified by: C

[Figures in longhand, front
of Statement]:[Figures in longhand, reverse
side of Statement]:

314.50

33

255.71

51.98

35.

25

59.79

10.

12

135.

25.

5.07

37

194.79

23.31

4.75

25

25.

28

2

6.0718

18

35.

53

16

8.23

7

13.88

41

193.79

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Ariz.

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Oct 2 '44	255.71	20.00—	
Oct 3 '44	233.71		39.00
Oct 5 '44	274.71		100.00
Oct 7 '44	374.71	20.00—	
Oct 7 '44	354.71	60.00—	
Oct 13 '44	294.71	4.27—	
Oct 18 '44	290.64	30.20—	
Oct 23 '44	260.64	3.00—	
Oct 24 '44	332.64	60.00—	
Oct 25 '44	232.64		
Oct 26 '44	257.64	25.00—	100.00
Oct 27 '44	272.64	7.54—	
Oct 31 '44	265.10	11.03—	

Balance 254.07

Vouchers Returned: 10

Count Verified by: T

[Figures in longhand, front
of Statement]:[Figures in longhand, reverse
side of Statement]:

255.71

11.03

254.07

7.54

20.

1.64

60.

20.

4.07

240.64

30.

120

3

25.

120.64

60.

240.64

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Dec 5 '44	208.01	50.00—	
Dec 6 '44	158.01	3.41—	
Dec 6 '44	154.60		100.00
Dec 8 '44	254.60	1.77—	
Dec 9 '44	252.83	28.06—	
Dec 15 '44	224.77	25.00—	
Dec 21 '44	199.77	5.50—	
Dec 22 '44	194.27	25.00—	
Dec 28 '44	169.27	20.00—	
Balance			149.27

Vouchers Returned: 8

Count Verified by: C

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across	Deposits
Jan 4 '45	149.27	20.00—	
Jan 6 '45	129.27	8.88—	
Jan 6 '45	127.27	8.88—	
Jan 8 '45	120.39	1.77—	
Jan 8 '45	118.62	7.34—	
Jan 10 '45	111.28	20.00—	
Jan 16 '45	91.28	73.15—	
Jan 20 '45	18.13	4.63—	
Jan 31 '45	13.50		176.50
			Balance 190.00

Vouchers Returned: 7

Count Verified by: C

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Feb 1 '45	190.00	26.42—		
Feb 3 '45	163.58	15.00—	4.44	
Feb 6 '45	144.14	70.00—		
Feb 6 '45	74.14			100.00
Feb 17 '45	174.14	150.00—		760.00
Feb 27 '45	784.14	25.00—		
Feb 28 '45	759.14	11.91—		
Feb 8 '45			Balance	747.23

[Figures in longhand]: 7

\$767.06

3-17-45

Vouchers Returned: 7

Count Verified by: C

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across			Deposits
Feb 8 '45					
Mar 1 '45	747.23	1.66—			
Mar 6 '45	745.57				100.00
Mar 7 '45	845.57	30.00—			
Mar 7 '45	815.57	30.00—	8.38—	1.77—	
Mar 8 '45	775.42				100.00
Mar 13 '45	875.42	30.00—			
Mar 14 '45	845.42	29.00—			
Mar 19 '45	816.42	30.00—			
Mar 24 '44	786.42	10.30—			
Mar 26 '45	776.12	30.00—			
Mar 28 '45	746.12	21.00—			
Mar 28 '45	725.12	10.60—			
Mar 30 '45	714.52	5.00—			
Mar 31 '45	709.52	32.66—			
[Figures in longhand] :					747.23
					<hr/>
					Balance 676.86
[Figures in longhand] :					60.37

Vouchers Returned: 14

Count Verified by: B

(Testimony of Zoa H. Zane.)

Defendant's Exhibit AD—(Continued)

Head Office

FIRST NATIONAL BANK OF ARIZONA

Phoenix, Arizona

Statement of Account with

ZOA ZANE

1722 W. Tonto, Phoenix, Arizona

MM

Date	Old Balance	Checks—Listed in Order of Payment—Read Across		Deposits
Apr 2 '45	676.86	14.28—		
Apr 2 '45	662.58	45.00—		
Apr 3 '45	617.58	7.67—		60.43
Apr 13 '45	670.34	1.77—		
Apr 19 '45	668.57	6.00—		
Apr 23 '45	662.57			46.41
Apr 24 '45	708.98	30.00—		
Apr 24 '45	678.98	9.97—		
Apr 25 '45	669.01	385.00—	25.00—	
Balance				259.01

Vouchers Returned: 9

Count Verified by: C

The Court: We will now have a recess, gentlemen.

(Thereupon a short recess was taken.)

After recess, all parties as heretofore noted by the Clerk's records being present, the trial resumed as follows:

(Testimony of Zoa H. Zane.)

Zoa H. Zane resumed the witness stand and testified further as follows:

Re-cross Examination—(Resumed)

Mr. Baker:

Q. Now, Mrs. Zane, about that \$400.00 loan that you made to that lady, has that ever been repaid?

A. Yes.

Q. How was it repaid? [240]

A. \$35.00 a month.

Q. At the rate of \$35.00 a month?

A. Yes.

Q. I noticed some \$35.00 deposits so that probably indicates the re-payment of that loan?

A. Yes.

Q. I hand you a statement from the bank, being a part of Defendant's Exhibit AD, for the month of March, 1943. The first entry I find thereon is a balance of \$13,896.65. That was your original deposit after you returned from Indio in the bank?

A. Yes.

Q. Here in Phoenix? A. Yes.

Q. That was made soon after you returned, is that correct?

A. Well, I had evidently been in town about two weeks before I deposited the check.

Q. I believe you testified, and so did Dr. Lytton-Smith, that you first was examined by him in December, 1943, and had an operation in October, 1943, is that correct? A. Yes.

(Testimony of Zoa H. Zane.)

Q. And it was soon thereafter that your husband telephoned Dr. Blackman, you knew of that, [241] didn't you? A. No, not immediately.

Q. I am handing you a bank statement which is a part of Defendant's Exhibit AD in evidence, this bank statement being for October, 1943, and will ask you to examine the same. That bank balance of \$2,400.00 credit, that what you had at that time? A. Yes, I suppose it was.

Q. This suit was brought against the Pacific Greyhound Line, it was brought in December, 1944?

A. Yes.

Q. You were familiar when it was filed, were you not? A. Yes.

Q. I hand you your bank statement for December, 1944, this being a part of Defendant's Exhibit AD. I will ask you to look at the same. That bank balance credit is in the sum of \$149 67?

A. Yes.

Q. That is what you had in the bank at that time? A. Evidently.

Q. In one of these—I believe you testified in response to a question by Mr. Stahl, that you and your husband had no source of income and no [242] property, income producing property other than your husband's earnings, is that correct?

A. Yes.

Q. I will ask you if you remember of ever going through that—these have been mixed up. I had them all separated out during the noon hour, I will have to go through them and—maybe you will

(Testimony of Zoa H. Zane.)

remember it, of a deposit in the sum of \$1,000.00 being made during this course of time, do you remember that?

A. I suppose that is when I had to cash the bonds.

Q. You assume that is true, you did cash a bond? A. Yes, I suppose it was.

Q. And there is another deposit there in the sum of \$760.00. Do you remember that?

A. That sounds like another bond.

Q. The chances are you have cashed all of your bonds?

A. No, I haven't. I have at least two.

Q. You have at least two? A. Yes.

Mr. Baker: I think that is all. [243]

Re-direct Examination

Mr. Stahl:

Q. Mrs. Zane, when did you first learn or find out about the injury to your right femur, thigh-bone, hip?

Mr. Baker: We object to that as not proper re-direct examination, has been gone into fully in his direct examination.

Mr. Stahl: I don't know for sure whether she answered it or not.

The Court: I am sure she answered that question. You may answer it again.

A. It was toward the latter part of August in 1943.

(Testimony of Zoa H. Zane.)

Mr. Stahl: And was that when you went to Dr. Smith, Lytton-Smith?

A. I went to Dr. Ryerson first and he sent me to Dr. Lytton-Smith.

Q. Was that in August or September?

A. Well, it was September before I got to see Dr. Lytton-Smith.

Q. When did you see Dr. Ryerson?

A. It had been a few days after the X-rays were taken. I think it took four or five days before the X-rays were done.

Q. Do you mean, Dr. Ryerson? [244]

A. Yes.

Q. Those X-rays, do you know when they were taken?

A. It was the last part of August, but I think it was the first of September, or something like that, before they were sent to Dr. Ryerson.

Q. And Mr. Baker asked you when you filed your suit. Will you state when you first found out as to your right to bring suit or you knew anything about that?

Mr. Baker: We will object to that, if the Court please.

Mr. Carson: It becomes very material, your Honor.

The Court: Well, why?

Mr. Carson: Because, it becomes very material on this question, on the question of tender, for one thing, if she has the right to make tender on the

(Testimony of Zoa H. Zane.)

question of whether she had saved her money, or something like that.

The Court: Well, I don't know. Ask when she determined to file a law suit, not whether she had the right to file a law suit. Maybe she had the right to file, I don't know.

Mr. Stahl: When did you determine you would file suit? [245]

A. I think it was in August, 1944.

Q. Out of the money you received, Mrs. Zane, from this settlement, how much was it you paid for the artificial limb out of this money?

A. I paid \$275.00 when I got it and then I paid twenty-five to have it re-built.

Q. And that was paid to the Los Angeles outfit?

A. The \$275.00 was. \$25.00 was paid to the Arizona Brace Shop here in town.

Q. Did you expend any other money to the Arizona Brace Shop?

A. Oh, there was for shrinker and crutch pads and tips, and such as that.

Q. All of that was at what time, about what time were those expenditures?

A. Oh, I don't know. They have been over a period of time.

Q. During what——

A. (Interrupting): The shrinker, I bought right after I came back from Indio.

Q. How was that?

A. I say, the shrinker for my stump I bought right after I came back from Indio.

(Testimony of Zoa H. Zane.)

Q. That is what I mean, it was during the spring or summer of 1943? [246] A. Yes.

Mr. Stahl: Mark this.

(The document was marked as Plaintiffs' Exhibit 12 in evidence.)

Q. Here is what purports to be a receipt, Plaintiffs' Exhibit 12 for identification, for \$25.00. Is that connected with that brace shop?

A. Yes, that was a deposit. They never did finish re-building the leg.

Q. You gave them a check for that?

A. Yes.

Mr. Stahl: I will offer that.

Mr. Baker: May I see it, please?

Mr. Stahl: That is a receipt for \$25.00. (Handling the document to Mr. Baker.)

Mr. Baker: I have no objection to this.

(The document was received and marked as Plaintiffs' Exhibit 12 in evidence.)

PLAINTIFFS' EXHIBIT NO. 12

July 23, 1943.

Received of Zoa Zane Twenty-five and no/00 Dollars.

Deposit.

\$25.00.

AUNGER ARIZONA BRACE
SHOP—C. B.

(Testimony of Zoa H. Zane.)

Mr. Stahl: Now, I believe you testified, Mrs. Zane, that when you deposited the fourteen thousand, five hundred in the bank over there at Indio——

A. Yes.

Q. And then you drew some checks against that? A. Yes. [247]

Q. And what were those checks for, in general?

A. Well, they were for the hospital there in Indio and for that artificial limb.

Q. And now in reference to the cars, you purchased the La Salle, I believe, on August 13th, or thereabouts, 1943? A. Yes.

Q. And how long did you keep that?

A. For about a year.

Q. And then what did you do with it?

A. I sold it.

Q. And did you purchase another car in place of it? A. Yes, a Ford.

Q. And what Ford car did you purchase, or were there any other cars purchased by you or your husband?

A. Yes. When Jack came home from the Navy, why, he needed a car to drive to work so he got him a car.

Q. Now, in these statements there appears some deposits from time to time, and I believe among them you said a part of it was a re-payment on the loan and then there are some other deposits on there. What, in general, are those?

A. Well, during the time that Jack—before

(Testimony of Zoa H. Zane.)

[248] he went to the Navy and since he has gotten out, most of them that appears is his checks I have sent him and deposited, and during the time he was in, why, the \$100.00 deposits, that is what the Navy sent me, and then, too, there was his \$300.00 mustering out pay was deposited.

Q. What?

A. Jack's mustering out pay was deposited to that account.

Mr. Stahl: I think outside of covering some questions I have overlooked, or I think I have, I will probably encroach. This is not re-direct. I want to be sure that I have covered these things.

Q. You testified, I believe, Mrs. Zane, in your direct examination—I may have asked you this before—about a conversation you had at the hospital during the time you were there with Dr.—with Mr. Cameron and Dr. Blackman. They were both present in your room in which certain things were discussed. I believe that is the only conversation you testified to when they were both present. I want to see whether or not you can fix the approximate date of that conversation. I may have asked that.

A. Well, they were in the room one time they were discussing the artificial limbs and the [249] people they knew.

Q. Yes, when was that?

A. Oh, it was probably about the middle of January.

Q. 1943?

A. Yes.

(Testimony of Zoa H. Zane.)

Q. That is as close as you can fix that?

A. Yes.

Q. And then there was—at the time of these different conversations, you testified to various conversations you had with Dr.—with Mr. Cameron and Dr. Blackman regarding the extent of your injuries, and so forth. Do you recall when, approximately, the first such conversation was that you had with Dr. Blackman?

A. Well, it was probably within a week or so after I had entered the hospital I had asked him about it.

Q. And about—I think you have already stated the substance of that conversation in your previous testimony, so I won't go into that again, but the conversation you had, the first conversation you had with Mr. Cameron, about when was that regarding the extent of your injuries?

Mr. Baker: What was that question?

(The question was read by the Reporter.)

A. Well, I imagine it was after Dr. Blackman had told me that there wasn't anything the matter with me except the loss of my leg.

Mr. Stahl: About when was that?

A. Well, possibly a week, or something like that, after I talked to Dr. Blackman about it.

Q. About what?

A. About a week after.

Q. About a week after the first conversation you had with Dr. Blackman?

A. Yes.

Q. Now, as to the matter of pain in your upper

(Testimony of Zoa H. Zane.)

leg and hip and knee, I believe you stated—described what that pain was, that you did have pains there almost from the beginning, from the time you entered the hospital? A. Yes, sir.

Q. And what was the nature of it?

Mr. Baker: Oh, we object to that.

Mr. Stahl: I guess it has been gone into.

Mr. Baker: Repetition.

Mr. Stahl: Will you state whether or not anything was said about that to Dr. Blackman?

A. Yes, I told the doctor about it.

Q. If so, when?

A. He said it was probably a reaction from [251] the amputation.

Q. And, if so, when was that?

A. Well, it was probably the first or second time that they dressed my leg.

Q. That was the first time you talked to him?

A. Yes.

Mr. Stahl: I believe that is all.

Mr. Baker: No further questions.

(The witness was excused.)

Mr. Stahl: Now, if the Court please, we plead in our complaint the statute of California. I believe you will admit—in our complaint, we plead the statute of California, Paragraph 1542. We want to offer that statute and ask you if you will stipulate that that statute, they had that statute in California at the time.

Mr. Baker: Oh, you mean that Section 1542?

Mr. Stahl: Yes.

Mr. Baker: What did I have in my Answer?

Mr. Stahl: You said you had no knowledge or information.

Mr. Baker: I was answering for the Pacific Greyhound Lines, and they don't.

Mr. Stahl: Will you stipulate as to that [252] statute?

Mr. Baker: You had it correctly cited in your complaint, certainly, that is true.

Mr. Stahl: Then it may be stipulated?

Mr. Baker: Yes, the one Section of the statute that you have cited is a part of the California code.

Mr. Stahl: And was at the time of this accident?

Mr. Baker: Yes.

Mr. Stahl: That is Paragraph 1542, which is quoted in the second or third count. Then, if the Court please, in connection with that we wish to introduce several California decisions construing that statute, and as I understand it, the cases are more a matter for the court than the jury, but I suppose we ought to introduce them by title and volumes——

Mr. Baker (Interrupting): What is this? I don't hear you, Floyd.

Mr. Stahl: We want to introduce several cases construing——

Mr. Baker (Interrupting): To read to the jury?

Mr. Stahl: No, not to read to the jury. Present them to the Court. [253]

Mr. Baker: They have no business in evidence, might be arguments before the Court?

Mr. Stahl: Arguments before the Court?

Mr. Baker: You will have the opportunity to present them.

Mr. Carson: As the California law——

The Court (Interrupting): All right, that is all right. Let's go ahead with this case. What do you want to do, rest?

Mr. Stahl: The only other thing besides that is the mortality table as to life expectancy.

Mr. Baker: Do you have it here?

Mr. Stahl: I don't have it here, it is in *Corpus Juris*.

Mr. Baker: Volume 40, if I recall.

Mr. Stahl: The page, I don't have.

Mr. Baker: I don't remember that. I think that is Volume 40. I will stipulate that is correct.

Mr. Stahl: It might show a person's expectancy, a person 23 years old might show——

Mr. Baker (Interrupting): Wait a minute, I don't know what it shows. I won't stipulate to that. I will stipulate it is in *Corpus Juris*, that is correct.

Mr. Carson: May we get that volume of [254] *Corpus Juris*.

The Court: Oh, yes, the stipulation covers that, there will never be any question about that.

Mr. Stahl: That, of course, would be a matter to be submitted to the Jury.

Mr. Baker: Does the Plaintiffs rest?

Mr. Stahl: Yes, the Plaintiffs rest.

Mr. Baker: The Defendants desire to make a motion and prefer to make it in the absence of the jury.

Mr. Stahl: Your Honor, do you expect to have court tomorrow?

The Court: I don't know yet, I will determine that later. Why?

Mr. Stahl: I thought if you didn't, why, we would like a little more time. There are a lot of involved questions on this line and it will take a long time and we have been so busy in the trial we would like to have a little time. If this goes over to Tuesday, I believe this motion should go over to Tuesday and we have been so very, very busy, and it is an involved and intricate thing, it will probably take two hours of argument.

The Court: The Court can take care of the time to argue it.

Mr. Stahl: I appreciate that. [255]

The Court: I will excuse you gentlemen until 10 o'clock in the morning. Keep in mind the Court's admonition.

(Thereupon the jury was excused from the Courtroom.)

Mr. Baker: The Defendant, at the close of the testimony for the Plaintiffs, now moves the Court to instruct the jury to return a verdict for the Defendant upon the grounds and for the reason that the Plaintiffs have failed to adduce testimony sufficient to constitute a cause of action against the Defendant.

The complaint is in three causes of action. Some of it is most repetitious. The second and third causes of action I have never been able to distin-

guish between the two. I don't know whether the Court has or not.

The Court: I was not able to.

Mr. Baker: They look identical to me. Of course, the first cause of action is different.

As a defense to all causes of action, we have interposed the defense of a written release, together with the vouchers which also contain releases. The complaint, as I view it, anticipated the defense, which was probably unnecessary, but as I understand the rule, if they do undertake to [256] anticipate it, then they assume all the burden of proof to carry out all of the allegations of their complaint.

First, they rely upon the California statute; secondly, they rely upon fraud. That is the way I analyze it. Is that the way the Court analyzes the situation? That is the way I analyze their complaint.

Now, first, in reference to the California statute which reads, as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

This is restricted to a general release. It does not cover a release that is specifically a release against known and unknown claims and expressly waives the provisions of this statute. The release in connection with this case provides as follows:

“It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected,

and all rights under Section 1542 of the Civil Code of California are hereby expressly [257] waived," that being the statute relied upon by the Plaintiffs in their complaint.

This matter has been before California, as far as I can find, three different times, before the Courts.

(Thereupon several citations were presented and argued before the Court by counsel for the Defendant.)

Mr. Baker: I submit, if the Court please, no cause of action has been proven in this case, either under the provisions of the Arizona Code, nor upon the ground of fraud.

(Further argument was presented to the Court after which a recess was taken at 4:45 P. M. of the same day.) [258]

10 o'clock A. M., May 19, 1945, all parties as heretofore noted by the Clerk's record as being present, the trial resumed as follows:

The Court: You gentlemen are excused until Monday afternoon at 2 o'clock. Keep in mind the Court's admonition.

(Thereupon the jury was excused from the courtroom.)

Mr. Stahl: If the Court please, I just want to say a few words.

(Thereupon arguments were presented by both Mr. Stahl and Mr. Carson, counsel for the Plaintiffs, after which the Court recessed at 11:05 o'clock A. M. of the same day.) [259]

2 o'clock P. M., May 21, 1945, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows:

The Court: The record may show that the Defendant's motion is denied. You may proceed.

Mr. Baker: Proceed with the Defendant's case, then?

The Court: Yes.

DEFENDANT'S CASE

MR. FRAZEE BURKE

was called as a witness on behalf of the Defendant, and after being first duly sworn, testified as follows:

Direct Examination

Mr. Baker:

Q. State your name, please.

A. Frazee Burke.

Q. Where is your residence, Mr. Burke?

A. Los Angeles, California.

Q. Do you know the corporation known as the Western Adjusting Bureau? A. I do.

Q. What is your connection with that corporation?

A. Well, I work for a concern, which, in turn, [260] owns that corporation. That concern is Swett & Crawford?

A. I am assistant manager of their Claims Department.

(Testimony of Mr. Frazee Burke.)

Q. That gives you automatically a position with the Western Adjusting Bureau, is that correct?

A. Yes.

Q. The Western Adjusting Bureau—you have seen the voucher—I will re-frame the question.

You have seen the vouchers that are in evidence in this case, have you, Mr. Burke?

A. Well, I have seen them in the back of the courtroom. I have not examined them. I have seen copies of them, carbon copies.

Mr. Carson: Mr. Baker, have you qualified this man? Is he an official of the Greyhound, is that right, or what duties——

Mr. Baker (Interrupting): May I do it in my own way, or do you want to do it?

Mr. Carson: Well, I don't want to do it.

Mr. Baker: Well, all right. I am handing you Defendant's Exhibits C and D in evidence, which are vouchers and checks drawn on the Western Adjusting Bureau by a man named Cameron. Is this company to which you are referring the same company which appears on these vouchers? [261]

A. You mean, the Western Adjusting Bureau?

Q. Yes. A. It is.

Q. Will you state your position with the Western Adjusting Bureau as assistant manager?

A. It would be the same as with Swett & Crawford.

Q. What is the connection, if any, between the Western Adjusting Bureau and the Pacific Greyhound Lines?

(Testimony of Mr. Frazee Burke.)

A. The Western Adjusting Bureau, as I say, are wholly a corporation owned by Swett & Crawford. Swett & Crawford have an agreement with the Pacific Greyhound Lines, under which agreement all claims by third persons against the Pacific Greyhound Lines on account of personal injuries are adjusted. In other words, we investigate and adjust their accidents as though we were their Claim Department.

Q. Does the Pacific Greyhound Lines maintain a Claim Department for the purpose of adjusting and investigating claims?

A. No, not personal injury claims.

Q. Under what conditions do you do that with the Pacific Greyhound Lines, for a compensation?

A. That is right.

Q. On what basis? [262]

Mr. Stahl: If the Court please, I don't know whether this witness is competent to testify about those things. There are undoubtedly agreements which are in writing between the two companies and they would be the best evidence. May I ask a few questions under voir dire?

The Court: Well, if that is material. This corporation is the one that signed the checks. I see that the corporation's name is signed to the vouchers.

The Witness: May I have the question?

(The question was read by the Reporter.)

A. They pay us on the mileage basis. We get a fee based on the miles operated by the Greyhound Lines each month.

(Testimony of Mr. Frazee Burke.)

Mr. Baker: I will ask you whether or not the Pacific Greyhound Lines is a self-insurer?

A. No.

Mr. Stahl: Well now, if the Court please, he says he is not an officer connected with the Pacific Greyhound Lines.

Mr. Baker: I will ask you first, do you know?

A. I do.

Q. Is it a self-insurer?

A. Up to a certain point. They carry a certain portion of their salaries on insurance, on [263] what is known as an Excess policy and what is, in turn, referred to as a Retention, a portion of the risk which they carry themselves.

Q. Which insurance does it pay, what they call the excess losses? A. Yes.

Mr. Stahl: I object on the ground it is incompetent, irrelevant and immaterial whether they are self-insurers or not.

The Court: I don't really see the purpose of it myself.

Mr. Baker: Simply to show the connection between the Western Adjusting Bureau and the Greyhound Lines.

Mr. Stahl: What is the difference what the connection is?

Mr. Baker: Well, I am trying to show that the Western Adjusting Bureau is not an independent contractor, that it was working for the Pacific Greyhound Lines in adjusting its claims. That is what I

(Testimony of Mr. Frazee Burke.)

am trying to show, and I will show you later that Cameron was its agent.

Q. Do you know this Mr. Cameron who executed these vouchers which I have just shown you?

A. I do.

Q. What are his initials, please? [264]

A. William C., I think it is, William. I always called him Bill. I have known him for years, always been Bill Cameron.

Q. Was he, in 1942, and at the time that these vouchers were executed, an agent for the Western Adjusting Bureau? A. He was.

Q. And for what purposes?

A. Investigation and adjustment of claims, and his work was confined to the Greyhound claims. We handle a great many other accounts, but his work was, to all intents and purposes, he was busy about their work and whatever we could have used him on, other matters, any time we desired.

Q. The Western Adjusting Bureau, as you say, handles many different accounts? A. Yes.

Q. In the adjusting line? A. Yes.

Q. And Cameron's work was mostly for the Greyhound Lines, is that correct? A. Yes.

Q. Is Cameron available for a witness in this case? A. He is not.

Q. Will you state why? [265]

A. Cameron became ill, I can't tell you the date, within the last year or approximately a year ago, and I don't know where he is now. The last I heard

(Testimony of Mr. Frazee Burke.)

of him he was in the Camarillo State Hospital north of Los Angeles a short distance.

Mr. Carson: There is a proper way to show that if that be true.

The Witness: I say that. I didn't see him in the hospital. It is my understanding and belief that that is the last——

Mr. Stahl (Interrupting): We make a motion to strike that, his understanding and belief.

Mr. Baker: He was an employee of the company up to the time he was taken ill, was he?

A. That is right.

Q. He is not an employee of the company now?

A. No.

Q. Do you know why he is not an employee of the company?

Mr. Stahl: Of your own knowledge?

A. Well, except for what I have observed personally about him before and at the time he left our employment, I am afraid I would be repeating hearsay if I told you what I know of his condition. For more than two or three months before he left our employ he became continuously [266] and obviously more unsettled mentally until such time that we just could not let him handle our claims any more. This condition came on, as I say, oh, some time around eight or ten months ago. The next I heard him, I was informed of his whereabouts and again didn't see him. I saw him subsequent to that and he told me where he had been.

(Testimony of Mr. Frazee Burke.)

Mr. Baker: Q. The trouble is mental, is it?

A. Yes. That, again, is my diagnosis.

Mr. Baker: And you have seen him lately?

A. Well, yes. He was in and out of this hospital and during the interval between those two periods when he was in the hospital I saw him.

Q. In your opinion is he mentally competent to be a witness?

A. I can answer it this way, by saying that we didn't regard him as being mentally competent to handle our work, and I don't think the man is right mentally. I don't know what the trouble is. He had a long—well, a typical experience of a man who fought all through the last war with the Canadian Army from start to finish——

Mr. Carson (Interrupting): We object to this stuff, your Honor. [267]

The Court: All right.

Mr. Baker: You ever know of a Dr. Blackman in Indio?

A. I know that such a man practices down there merely by reference to the files. I never saw him or talked to him in my life.

Q. Is he a physician for the Western Adjusting Bureau? A. He is not.

Mr. Carson: I object to it. It would not make any difference whether the Western Adjusting Bureau—it wouldn't make any difference whether he was or was not.

The Court: Well, I don't know.

(Testimony of Mr. Frazee Burke.)

Mr. Baker: Was he ever a physician or a doctor for the Western Adjusting Bureau?

A. No.

Q. Did Mr. Cameron have any authority to retain or hire a physician or a doctor either for the Western Adjusting Bureau or the Greyhound Lines?

Mr. Stahl: We object to that. He certainly can't testify as to the Greyhound.

Mr. Carson: Not an employee of the Greyhound.

The Court: I don't see how he can. [268]

Mr. Baker: In reference to the adjustment and the investigation of claims, did Mr. Cameron have any authority to hire or employ Dr. Blackman for the Western Adjusting Bureau or the Greyhound Lines?

Mr. Carson: We object to that.

Mr. Baker: That is proper.

The Court: All right, he may answer.

A. None.

Mr. Baker: Were you ever advised or was the Western Adjusting Bureau ever advised that Dr. Blackman was acting as the physician or surgeon for the Greyhound Lines or the Western Adjusting Bureau?

Mr. Stahl: If the Court please, we think it is immaterial whether he was advised or not. We object on the ground it is immaterial.

The Court: Yes.

Mr. Baker: Did Mr. Cameron ever advise you that he had retained Dr. Blackman?

(Testimony of Mr. Frazee Burke.)

Mr. Stahl: We object on the ground it is immaterial.

The Court: All right, he may answer.

A. No.

Mr. Carson: Your Honor, for the purpose of the record we make a motion to strike it. [269]

The Court: Oh, don't waste any time. I have heard your objection. The motion is denied.

Mr. Baker: That is all, you may cross examine.

Mr. Stahl: If the Court please, I don't think there is any cross examination. I do want to make a motion in one particular where he testified that Mr. Cameron had no authority. I think that calls for a conclusion of the witness as to whether he had authority or not. If it would be authority which the law would recognize, which would be a conclusion of law.

The Court: It is a statement on the facts, isn't it? He knew what Mr. Cameron's duties were, surely.

Mr. Stahl: Yes. Of course, it would be a question of law whether or not, in view of his duties, that we could necessarily follow; that is, a part of his apparent authority as a matter of law to——

Mr. Baker (Interrupting): Well, if there is any question about that I might ask a few more questions.

The Court: All right.

Mr. Baker: As assistant manager of the Western Adjusting Bureau, do you know the exact [270] duties and authority of Mr. Cameron as agent for the Western Adjusting Bureau? A. I do.

(Testimony of Mr. Frazee Burke.)

Q. Mr. Cameron was only an agent for the Pacific Greyhound Lines in that he was agent for the Western Adjusting Bureau, is that correct?

A. That is right.

Q. In other words, he never worked for the Pacific Greyhound Lines at any time, is that right?

A. Never, to my knowledge.

Q. Well, taking in 1942, at the time this claim was settled?

A. No, never during any period while I was acquainted with him, and that goes back for many years.

Q. He was never employed by the Pacific Greyhound Lines?

A. Never during my period of acquaintanceship with him.

Q. He was an employee of the Western Adjusting Bureau? A. He was.

Q. And his only relationship with the Pacific Greyhound Lines was through the Western Adjusting Bureau, is that right?

A. That is correct. [271]

Q. Now, what was his authority again? I believe you recited it once. Recite it again.

A. Well, the best way I can describe it is, that he was employed for the purpose of investigating accidents involving the equipment of the Pacific Greyhound Lines and which resulted in injuries to members of the public. By that I mean, injuries to people other than employees of the Greyhound Lines; passengers or others not connected with the

(Testimony of Mr. Frazee Burke.)

Greyhound Lines. In addition to investigating such affairs, he would, in certain instances, endeavor to bring about settlement of any claims which might arise because of such injuries. Some of the claims were settled, obviously, some were not. Some we desired to settle; some we didn't settle. Some got into litigation and could not settle them if we wanted to. It is the usual picture of a public carrier in their dealings with the injured public.

Q. He was authorized to investigate personal injuries to third persons and to negotiate for the settlement of claims?

A. That is correct. He had limited authority to settle claims without reference to the office. If the settlement involved money, the payment of money in excess of that authority, then he got [272] specific authority to settle all claims.

Q. What was the limit of the authority to settle without reference to the office?

A. My recollection is \$300.00.

Q. Everything over \$300.00 had to be approved, did it, by somebody else?

A. If he were out in the field in any emergency, he might draw a draft for any amount which his judgment warranted, and that draft would be accepted or rejected when it was presented for payment, depending upon whether or not, in the judgment of his superiors, the settlement was justified by the evidence. Normally, a settlement for \$300.00 or under would just be passed without any question.

Q. I will ask you whether or not the Western

(Testimony of Mr. Frazee Burke.)

Adjusting Bureau had any authority to represent the Pacific Greyhound Lines, save and except in the investigation and negotiation for the adjustment of personal injuries to third persons?

A. That is the extent of our authority. Our entire relationship looked only toward that end.

Q. I will ask you whether or not Mr. Cameron, as agent for the Western Adjusting Bureau, had any further authority than that recited?

A. None. [273]

Q. I will ask you whether or not Dr. Blackman, in Indio, had any authority whatever to negotiate for, and/or settle any claim against the Pacific Greyhound Lines?

Mr. Carson: We object to the question, your Honor.

Mr. Baker: If you know.

Mr. Stahl: He is not an officer or employed to settle the claims for the Pacific Greyhound Lines.

The Court: Objection sustained to that.

Mr. Baker: Did any person other than the Western Adjusting Bureau or its agents have any authority to negotiate for the settlement of any personal injury claim for third persons for the Pacific Greyhound Lines?

Mr. Stahl: We object to that, because, for the same reason, this man is not employed or connected with the Pacific Greyhound Lines.

Mr. Baker: If you know.

The Court: I will sustain the objection.

Mr. Baker: That is all.

(Testimony of Mr. Frazee Burke.)

Cross Examination

Mr. Stahl:

Q. Mr. Burke, as I understand it, you said [274] that the Western Adjusting Bureau, the work it does for the Pacific Greyhound Lines is on a mileage basis?

A. Our compensation is computed on the basis of the number of miles traveled by the Greyhound busses during each monthly period.

Q. And when you adjust claims for them, you do that through the man that you send down to investigate the accidents?

A. That is correct.

Q. And Mr. Cameron was one of these men?

A. He was.

Q. Just to make it clear, Mr. Burke, these drafts are drawn by the Western Adjusting Bureau on the Pacific Greyhound Lines?

A. That is right.

Q. And, of course, were paid by the Pacific Greyhound Lines? A. That is right.

Mr. Stahl: That is all.

Mr. Baker: Just one more question I forgot to ask you. May I be permitted to ask one question?

Mr. Carson: Yes, go ahead.

Re-Direct Examination

Mr. Baker:

Q. I am handing you Defendant's Exhibits [275] B and E, being the releases. I will ask you whether

(Testimony of Mr. Frazee Burke.)

or not those are the forms used by the Western Adjusting Bureau, you recognize the forms?

A. Yes, they are.

Q. Were they the same forms that were used during the year 1942 by the Western Adjusting Bureau? A. The same forms.

Q. And were any other forms used at that time?

A. For releases?

Q. Yes.

A. No. An adjuster might be out in the field and find himself without forms and he might draw a release in longhand in some isolated case, but if he were supplied with his regular equipment he would use that form of release, the only one that we have.

Mr. Baker: That is all.

Re-Cross Examination

Mr. Stahl:

Q. You wouldn't say, Mr. Burke, would you, that an agent like Mr. Cameron, an adjuster, would investigate a claim and find that somebody who has been injured in a Greyhound accident required medical attention, that he would have no right to [276] supply it; order to supply it?

A. You mean, on behalf of the Greyhound Lines?

Q. Yes.

A. No, he would have no such authority. Now, as a matter of first aid, it is a matter of policy to furnish first aid on all of these cases. I am volunteering you an opinion which you find, if you take a policy of insurance on your own automobile.

(Testimony of Mr. Frazee Burke.)

Mr. Carson: We object to it——

Mr. Stahl: (Interrupting) He can furnish first aid?

A. Well, he would not have occasion to unless he happened to be present at the happening of an accident through some coincidence. He would not be so associated with an injured person, or for first aid. He would have no occasion to be there. He would not come in contact with him until some appreciable period of time after the happening of an accident.

Mr. Stahl: That is all.

The Witness: I will say this, if I can go on and answer your question, that if, as a coincidence, he, or any of our other adjusters, whether it might be a man who normally, in the [277] course of his duties, handles Greyhound claims—we have a great many adjusters, we have many men handling claims, but if they were traveling down on the road in an automobile and they came upon the scene when it occurred and they could be of assistance in seeing that they get to doctors, so what they did was to send them to the nearest doctor regardless of who it might be. They would assist to that extent and they would not be criticized.

Mr. Baker: In other words, you would not criticize them for exercising the ordinary doctrine of humanity in taking care of people who had been injured?

A. No. I would criticize an adjuster if he saw a wreck of that kind, or if he knew of any other

(Testimony of Mr. Frazee Burke.)

person whose business we handled, if he closed his eyes and drove off.

Mr. Carson: That is all.

Mr. Baker: May Mr. Burke be excused? He wants to get back to Los Angeles.

The Court: Yes, he may be excused.

(Thereupon the witness was excused.)

Mr. Baker: Mr. Parks.

EARL F. PARKS

was called as a witness on [278] behalf of the Defendant, and being first duly sworn testified as follows:

Direct Examination

Mr. Baker:

Q. Will you state your name, please?

A. Earl F. Parks.

Q. And where is your residence?

A. At the present time, Phoenix, Arizona.

Q. And what is your occupation?

A. Superintendent of Operations for the Pacific Greyhound Lines.

Q. In what district?

A. At the present time known as Division 2 covering the territory between Albuquerque, New Mexico, El Paso, Texas, on the east; El Centro and Indio, California, on the west.

Q. Your present authority does not go beyond Indio?

(Testimony of Earl F. Parks.)

A. That is correct, except on Highway 66, between Albuquerque and Los Angeles. It does extend through to Los Angeles on that portion of the operation.

Q. In December, 1942, what was your occupation?

A. I was Superintendent of Operations of the Pacific Greyhound Lines, headquarters at Los Angeles, covering the territory north of San Luis [279] Obispo and Fresno, California, to the south, to El Centro, Indio and San Diego, California.

Q. Did you know of an accident that occurred on your division, which was then the Los Angeles Division, as I understand it?

A. That is correct, that is Division 3.

Q. On December 11, 1942, in which Mrs. Zane was injured?

A. Yes. I was stopping at Palms Hotel in Palm Springs, California, the night of the 10th and they called me at approximately 5 o'clock in the morning and informed me of the accident, and I got over there as soon as I could get dressed and drive over to the scene of the accident.

Q. I understand that Indio, California, was under your jurisdiction at that time?

A. That is correct.

Q. You didn't actually see the accident.

A. I did not.

Q. Nor observe anything about the accident. You got there after the accident?

(Testimony of Earl F. Parks.)

A. No. I arrived there approximately, maybe an hour and a half after the accident.

Q. Do you remember the name of Mrs. Zane?

A. Yes, I do, I remember seeing the young lady in the hospital at the time along with a [280] great number of others that were injured.

Q. How many passengers were injured in that accident, do you remember, Mr. Parks?

A. I have not reviewed the accident files since then, but at the time it seems to me there was approximately twenty or twenty-two injured at the time. When I arrived in Indio they had them in both hospitals there, and some on stretchers, on these litters in the hallways where they could hardly accommodate them. They were taking the most serious ones first.

Q. How many hospitals were in Indio at the time?

A. Two, to the best of my knowledge.

Q. What are the names?

A. Well, just the Coachella Valley Hospital and the La Casita, something like that. It is a Spanish name for the little house. La Casita, I believe.

Q. Do you know whether or not those injured passengers were taken to both hospitals?

A. That is right, they were distributed to both hospitals. All doctors available there were called for emergency treatments.

Q. You say all doctors available, where?

A. At Indio, California. [281]

(Testimony of Earl F. Parks.)

Q. Do you know how they were taken from the scene of the accident to the hospitals?

A. Some of the—the majority of them were taken in by ambulances from Camp Young. There was a large Army camp just east of Indio at the time, and there is an Army ambulance station at Indio and they prevailed upon everything available at the time to get those injured in.

Q. Where did this accident occur, west or east of Indio?

A. It happened approximately sixteen miles west of Indio.

Q. That is on the Los Angeles side?

A. That is right, on Highway 99.

Q. Do you know Dr. Blackman in Indio?

A. I know him, yes. I have met him. I have been treated myself by Dr. Blackman.

Q. In the event of injuries to passengers, Mr. Parks, outside of first aid and taking them to the hospital, does the Pacific Greyhound Lines furnish medical services at the hospital?

Mr. Carson: We object to that, he is not in a position——

Mr. Baker: (Interrupting) Well, you are the Superintendent, you know what they do or not, don't you? [282]

A. I do.

The Court: Well, we are interested in this particular case.

Mr. Baker: Well, all right. In reference to this case, did the Pacific Greyhound Lines furnish

(Testimony of Earl F. Parks.)

any medical service or hospital service to Mrs. Zane?

Mr. Stahl: We object, if the Court please, on the ground that he has not shown whether he knows that they did that or not. He was one man. It is a large organization. He was simply down there away from——

Mr. Baker: (Interrupting) Well, you were in charge of the Pacific Greyhound Lines in Indio, California, at the time of this accident?

A. That is right. I was there shortly after the accident.

Q. You were solely in charge, were you not, of the Pacific Greyhound Lines? A. Yes.

Mr. Baker: All right, does that satisfy you? Did the Pacific Greyhound Lines furnish any medical services or doctors to Mrs. Zane?

A. No, they did not.

Q. Was Dr. Blackman at that time, or is he now, an agent of the Pacific Greyhound Lines?

Mr. Stahl: We object to that, if the Court please, on the ground that calls for a conclusion.

Mr. Baker: Was he at the time of this accident an agent for the Pacific Greyhound Lines?

Mr. Stahl: We object to that on the ground it calls for a conclusion.

The Court: Well, I don't know. That would call for a legal conclusion. There was no relationship at all between this doctor and the Pacific Greyhound Lines?

(Testimony of Earl F. Parks.)

Mr. Baker: Well, there was some relationship, I will establish that as a predicate.

Q. What was the relationship between Dr. Blackman and Pacific Greyhound Lines at the time of this accident?

A. The only relationship between Dr. Blackman and the Pacific Greyhound Lines is, that he is on the medical staff of the Southern Pacific Company. The Southern Pacific Company, being a minority stockholder in the Pacific Greyhound Lines, the employees of the Pacific Greyhound Lines contribute \$1.75 a month towards the Hospital Association and which assures them of any medical attention in case of sickness, anything happening or accidents happening off of their tour of duty. If they are injured on their tour of duty, then it comes under [284] the State Compensation and they select a doctor of their own choosing. However, if they become ill—anything not covered by the State Compensation, then a treatment order is issued to the doctor in the territory in which they are treated without cost. However, the doctor only treats those who are employees and who are paid—paid-up members of the Hospital Association.

Q. In other words, the Pacific Greyhound Lines participate in the Hospital Association of the Southern Pacific, is that correct?

A. That is correct.

Q. And contribute the same amount—each employee contributes the same amount as the Southern Pacific employees of \$1.75 a month?

(Testimony of Earl F. Parks.)

A. That is right.

Q. Then those medical benefits——

Mr. Carson: (Interrupting) I think that question is slightly leading. I have not objected to it, but he has been putting every question in the words—I didn't object to it, but it certainly was a little bit leading, I would suggest.

Mr. Baker: I just uttered three words.

The Court: Yes.

Mr. Baker: These medical benefits which you have testified to, I will ask you whether or not they are available to any person except a paid-up employee of the Pacific Greyhound Lines?

A. To paid-up employees only. No others than an employee who is paid up and in good standing.

Q. And what disabilities do those medical benefits cover?

A. They cover sickness and accidents that have happened off of their tour of duty, off the job.

Q. The "tour of duty" you are referring to the course of employment?

A. In the course of employment. For instance, if I was out riding a horse on a Sunday and I was thrown, the hospital benefit would cover that. If I had been injured in the course of duty, then I would not come under the hospital benefits, but it would be the State Industrial Commission, being a claim against them.

Q. Well, does an employe who is injured in the course of employment, as you express it, the tour

(Testimony of Earl F. Parks.)

of his duty, come under this Hospital Benefit Association? A. They do not.

Q. How is that handled when an employee is injured in the course of employment?

A. That is handled by the Arizona State Industrial Commission. Those that are employed from this Division are brought into the State of Arizona. They all come into the Arizona State Industrial Commission, to which we pay our insurance and benefits into them, and all accidents while employed on their tour of duty comes under the Industrial Commission.

Q. In the event of an employee being injured in the course of employment who is entitled to the benefits of the State Workmen's Compensation Act, if he desired to go to a doctor who represented the company, with reference to employees coming under the Hospital Association, how would that doctor be paid, if you know?

A. If he is injured in the course of employment, that doctor is compensated by the Industrial Commission.

Q. At the regular rates?

A. At the regular rates, that is correct.

Q. Is there any provision for the treatment of passengers by doctors or hospitals?

A. There is none whatsoever. In case of an accident, why, at any place throughout the seven states through which we operate, the passengers are [287] taken to the nearest hospital, or where

(Testimony of Earl F. Parks.)

they can obtain medical attention regardless of who or where, or what it may be.

Q. Do I understand you, then, that all that the Greyhound Lines will do in the event of injuries to passengers is to take them to the nearest doctor, is that correct? A. That is correct.

Q. Do you know whether that was done in the case of this bus accident in which Mrs. Zane was so seriously injured?

A. That is true. That was reported to the Highway Patrol and the Sheriff's Office at Indio, and they dispatched all the ambulances that were available to get the injured people into the two hospitals. They were not designated. They just brought them in there and all the doctors were summoned for this emergency and treatment was given in accordance with their needs.

Q. Mr. Parks, as Superintendent of the Greyhound Lines Division, does Dr. Blackman have any authority to negotiate for the settlement of claims against the Pacific Greyhound Lines?

A. He had none whatsoever. He is a private practicing physician in the city of Indio, California, and a member of the Coachella Hospital [288] there. He is not retained by the Pacific Greyhound Lines whatsoever.

Q. Did Dr. Blackman have the right to make any representation to Mrs. Zane, or any other person, binding the Pacific Greyhound Lines?

Mr. Stahl: We object to that, if the Court please, on several grounds. One, it is a leading

(Testimony of Earl F. Parks.)

question and the other is that this witness we think does not—has not shown that he is able to answer that question of his own knowledge.

The Court: Well, who, in the company would be? If you would call the President he might not have anything to do with it; the Board of Directors might not have anything to do with it. Maybe this man claims he knows that. He says he is. We have to accept his word.

The Witness: What was the question?

(The question was read by the Reporter.)

A. He did not.

Mr. Baker: I will ask you whether or not Mrs. Zane was taken to the Coachella Hospital by reason of Dr. Blackman being there, or what was the reason for her being taken there?

Mr. Stahl: If the Court please, I think he has already testified that he came there an hour afterwards. [289]

The Court: Yes, the objection is sustained.

Mr. Baker: I believe you already stated that some of the injured persons were taken to one hospital and others to another, is that correct?

A. That is correct.

Q. Was there any distinction as to which hospital they should be taken?

Mr. Stahl: Now, if the Court please, he wasn't there at all.

The Court: No, he was not.

Mr. Baker: I will ask you whether or not you

(Testimony of Earl F. Parks.)

know if the Pacific Greyhound Lines had anything to do with taking these passengers to the hospital?

Mr. Stahl: He was not there for that purpose.

Mr. Baker: Well, do you know?

Mr. Stahl: Object to it on that ground.

Mr. Baker: Do you know whether they did or not?

The Witness: They did not.

Mr. Stahl: Well, I move that it be stricken, because he could not possibly know that.

The Court: He had to learn it from what someone told him. It may be stricken.

Mr. Baker: You may cross examine. [290]

Cross Examination

Mr. Stahl:

Q. When you spoke of this employee arrangement you said something about the Pacific Greyhound having a doctor in each territory, or, what I am getting at, is, was Dr. Blackman the doctor in that Indio territory?

A. Dr. Blackman represents the Southern Pacific Hospital Association and he is there and for the purpose of—he is in private practice and also contracted with the Southern Pacific Company for treating the employees, those that are paid up for those benefits in the Hospital Association.

Q. What I am getting at, he is the doctor in Indio who does handle such things for the Southern Pacific and, in turn, for the Pacific Greyhound?

A. For employees only.

(Testimony of Earl F. Parks.)

Q. That is what I mean.

A. That is right.

Q. And he is—do you know his connection with the hospital there; he owns the hospital, does he, or has an interest in it?

A. I don't know. He is on the staff of the Coachella Hospital. It is the largest of the two.

Q. And you were not—you were out at Palm Springs when this accident happened? [291]

A. I was stopping at Palm Springs the night of December 10, 1942.

Q. When did you first hear of it?

A. Approximately, around 5 o'clock in the morning.

Q. And how far is Palm Springs from Indio?

A. Oh, it is approximately twenty miles.

Q. You say you arrived at the scene of the accident about an hour and a half afterwards?

A. Approximately. When I received the 'phone call, why, I washed, dressed and jumped in the car and first went over to the scene of the accident and then from there on into Indio.

Q. Who was it that called you?

A. The agent at Indio. He was not the agent. It was a call from the sheriff's department for me.

Q. And you talked to the sheriff there?

A. I don't know who it was, whether it was a deputy sheriff or, more than likely a deputy. The sheriff's office in Riverside. That is a sub-station.

(Testimony of Earl F. Parks.)

Q. When you arrived at the scene of the accident was anybody there?

A. No one there at all. The driver of the truck was there, but not our driver or any of the passengers. [292]

Q. Now, the Pacific Greyhound does employ some—you have in your employ, do you not, chief surgeons, or surgeons?

A. We have no doctors under our employ whatsoever.

Q. What do you use, Southern Pacific doctors?

A. That is correct. The employees, when they contribute to the benefits at the hospital are assessed a fee of \$1.75 a month. Our members are then entitled to treatment.

Q. You know the connection of the Pacific Greyhound with the Southern Pacific, and that is, that the Southern Pacific owns stock of the Greyhound?

A. A small portion of stock.

Mr. Stahl: That is all.

Mr. Baker: I forgot to ask Mr. Parks a question, which is my fault. May I open up that point?

Mr. Carson: Yes, go ahead.

Mr. Baker: Will you mark this for identification, please?

(The document was marked as Defendant's Exhibit AE for identification.) [293]

(Testimony of Earl F. Parks.)

Re-Direct Examination

Mr. Baker:

Q. Mr. Parks, by what means do these employees obtain treatment from a physician; I mean, is there some procedure by which this must be gone through?

A. The Division Superintendent and those authorized by him may sign an order, a treatment order to the doctor.

Q. Do I understand, then, that they must have an order from the Superintendent or somebody under the Superintendent's authority before they can even go to a doctor?

A. That is correct, outside of emergency. Then the doctor will call and check with us and see if they are in good standing and they will assure them that they will mail an order to them.

Q. I am handing you Defendant's Exhibit AE for identification and ask you what that is, if you know?

A. This is a treatment order that is issued by the Pacific Greyhound Lines to a sick or injured employee.

Mr. Baker: We offer this in evidence.

Mr. Carson: We think it is absolutely immaterial. Object to it. It is immaterial and [294] has no relationship at all.

The Court: It may be received.

(Thereupon the document was received as Defendant's Exhibit AE in evidence and read to the Jury by Mr. Baker.)

(Testimony of Earl F. Parks.)

Mr. Baker: I guess that is all, now, Mr. Parks. You may cross examine.

Mr. Carson: No questions.

Mr. Stahl: That is all.

(The witness was excused.)

Mr. Baker: We now offer in evidence the testimony of Dr. Blackman and the nurse. They are both on one deposition, the depositions of Dr. Blackman and Mrs. Gladys Payne. Will you both stipulate that they are fifty miles from Phoenix at this time?

Mr. Stahl: Yes.

Mr. Baker: If you will not, I will testify.

Mr. Stahl: No, that is all right.

Mr. Baker: Can Mr. Whitney participate in reading these depositions? Suppose that you interrogate and I will give the answers to the best of my ability.

(Thereupon Mr. Baker took the witness stand.)

Mr. Baker: I will read the first part of it, Mr. Whitney. [295]

Mr. Baker (Reading Stipulation, as follows:)

“In the District Court of the United States
for the District of Arizona

“Civ. No. 642

“ZOA H. ZANE and JACK ZANE, her husband,
Plaintiffs,

vs.

“PACIFIC GREYHOUND LINES, a corporation,
Defendant.

“STIPULATION FOR TAKING
DEPOSITIONS

“It Is Hereby Stipulated and Agreed by and between attorneys for plaintiffs and defendant above named, that the defendant may on Wednesday, the 21st day of February, 1945, at the hour of 1:00 o'clock in the afternoon of said day at 519 Miles Avenue, Indio, California, before a Notary Public in and for the State of California, duly qualified to take depositions as provided in Rule 28, Rules of Civil Procedure for the District Courts of the United States, take the depositions of witnesses for the defendant in said action upon oral examination, whose names and addresses are as follows:

“Dr. W. H. Blackman of Indio, California

“Mrs. Gladys Payne of Indio, California

“Said examination to commence at said hour [296] of said day and continue from hour to hour and from day to day until completed.

“The depositions when so taken shall be transcribed, certified and returned to the Clerk of the above entitled Court as provided in Rule 30, Rules of Civil Procedure for the District Courts of the United States.

“Dated this 17th day of February, 1945.

“TERRENCE A. CARSON
STAHL & MURPHY

By TERRENCE A. CARSON
Attorneys for Plaintiffs.

“BAKER & WHITNEY
By ALEXANDER B. BAKER
Attorneys for Defendant.”

(The questions contained in the Depositions were read by Mr. Harold Whitney, and the answers were read by Mr. Baker.)

Mr. Baker:

“In the District Court of the United States
for the District of Arizona

“Civ. No. 642

“ZOA H. ZANE and JACK ZANE, her husband,
Plaintiffs,

vs.

“PACIFIC GREYHOUND LINES, a corporation,
Defendant.

“Deposition of Dr. W. H. Blackman.

“Be It Known, that pursuant to the Stipulation for Taking Depositions, hereto attached, and on

the 21st day of February, 1945, at the Office of Dr. W. H. Blackman, 519 Miles Avenue, in the City of Indio, County of Riverside, State of California, before me, Charles H. Shaw, a Notary Public in and for said County of Riverside, State of California, duly commissioned to administer oaths, personally appeared Dr. W. H. Blackman, called as a witness by the defense in the above entitled cause, who, being by me duly sworn, was interrogated by Roy W. Colegate, Esq., Attorney for the Defendant; the Plaintiffs being represented at the taking of said deposition by Terrence A. Carson, Esq., of counsel for Plaintiffs; whereupon the following testimony was taken and proceedings had:

“DOCTOR W. H. BLACKMAN,

having been duly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

“Direct Examination

“By Mr. Colegate:

“Q. Dr. Blackman, you are a practising physician [298] and surgeon here at Indio?

“A. Yes, sir.

“Q. And you are licensed in the State of California in that capacity? A. Yes, sir.

“Q. You are an M. D.? A. Yes, sir.

“Q. Will you tell us, please, the nature of your training and experience you have had?

(Deposition of Dr. W. H. Blackman.)

“A. I am a graduate of the University of Southern California; received my degree in 1933, after completion of my first year of internship at the L. A. County Hospital. I stayed on a second year of internship at the L. A. County Hospital.

“In the Spring of 1934 I was down in El Centro, and became Resident, in charge of the County Hospital there; remained there from April 1, 1934, to September 1, 1936.

“I came here to Indio as an associate of Dr. Gray, from 1936, September 1st, to July 1, 1938, at which time Dr. Pawley and I bought Dr. Gray's practice, and bought the Coachella Valley Hospital from him—the old hospital.

“Since that time I have been in partnership with Dr. Pawley, in practice here. [299]

“Q. Will you tell us the nature of your private practice, that is, whether there is any special line of work that you have followed, or just what sort of work you have done?

“A. Well, of course, in this type of locality we have to do general practice. I don't remember the exact percentages. We had it summarized recently. I think around about 20 per cent of our practice is railroad work. We do quite a little orthopedics, and surgery, and internal medicine—everything, including obstetrics.

“In the County Hospital at El Centro I did practically all of the orthopedic work, and a great deal of the general surgery.

(Deposition of Dr. W. H. Blackman.)

“Q. Since coming to Indio, will you tell us to what extent you have engaged in orthopedic work?

“A. Well, I couldn’t tell you off-hand, as far as percentage of practice is concerned; but we do quite a lot of industrial work, and railroad work. We have a great many highway accidents here, so that we do—I would think it would probably be safe to say pretty close to 25 per cent of our work would fall under the head of orthopedic surgery of one type or another.

“Q. Has that been true during the years you [300] have practiced here at Indio? A. Yes.

“Q. Will you tell us, Doctor, whether you treated Zoa Zane during the period from December, 1942, until March of 1943?

“A. Yes. She was brought into the Coachella Valley Hospital by ambulance on the morning of December 11th, following a Greyhound bus accident out here near Indio, and remained under our care until the 8th of March, 1943.

“Q. When you say “under our care,” what do you mean by that?

“A. Well, Dr. Raymond O’Connell was associated with me in practice at that time, and he is no longer with us. She was under my direct care. He assisted me in the operation. That is about all.

“Q. Will you tell us, please, what you found as to her condition when she was brought in on December 11th?

“A. She was in very profound shock, and in a rather critical condition, on admission, due to a

(Deposition of Dr. W. H. Blackman.)

very severe crushing injury of the right foot and ankle and lower part of the leg. The bones were both completely fractured, and the soft tissues were so badly traumatized that both the blood and [301] the nerve supply to the foot had been destroyed, and the foot was just hanging on by tendons and shreds of muscle. She also had a sprain and abrasion of the left ankle, and an abrasion bruise over the right knee, and some minor superficial abrasions and lacerations of the other extremities, and I believe some abrasions of the face.

“Q. Will you tell us the extent of the examination which you made of her at that time, on December 11th?

“A. Well, I made a complete examination when she was admitted, I would say from the top of her head down, checking for clinical signs of fractures, and internal injuries. Her condition was such at the time that we gave her blood plasma very soon after admission; gave her morphine for pain, and blood plasma. Her condition was such at the time that we simply did what is called a guillotine type of operation on this crushed extremity; we simply severed the remaining soft tissues, put antiseptic dressings on, and applied——

“Q. Excuse me, Doctor——

“A. ——sterile dressings, I would say.

“Q. I was going to ask you, after finishing your answer to the other question, what you did by way of treatment. But first of all, when you [302] examined her upon her admission, did you find any

(Deposition of Dr. W. H. Blackman.)

injuries other than those you have already testified to? A. No.

“Q. Will you tell us, please what you did for her in the way of treatment after this examination and finding the injuries you have described?

“A. Well, after examining her, we took X-rays of the crushed foot and leg,—just more as a matter of record, to show the extent of the bone damage; and I believe X-rayed the knee, because there was quite a severe abrasion and bruise over the knee.

“Q. That is, the right knee?

“A. The right knee. There wasn't sufficient clinical evidence of any other fractures that we felt warranted in taking other X-rays. The abrasions and superficial lacerations were cleaned up, dressed. We completed this emergency amputation after she was out of shock sufficiently to proceed.

“Q. When was that amputation performed?

“A. That was done on the morning of admission. I would say probably within two hours, or probably within about an hour after she was admitted. She was given plasma first, and as soon as she was out [303] of shock, we performed the operation.

“Q. Will you tell us, please, what other treatment, if any, you rendered to her on the day of her admission, beyond what you have stated?

“A. She was put to bed after surgery. We put traction onto the leg to prevent retraction of the muscles. Just treated her mostly for pain and shock, the remainder of that day.

(Deposition of Dr. W. H. Blackman.)

“Q. During the time that she was under your care she was kept at what hospital?

“A. Coachella Valley Hospital.

“Q. That is here at Indio? A. Yes, sir.

“Q. As a part of your care and treatment of her, did you keep a chart or record of what you did?

“A. Yes, sir.

“Q. And what the nurses under you did?

“A. That is right.

“Q. Now, Doctor, to the extent that it may be of assistance to you, I would like for you to refer to that chart or record of her care, and then next tell us, please, what your course of treatment consisted of for this woman, over the period following her admission on December 11th until the time she was discharged from your care, [304] or left your care.

“Mr. Carson: I would like to look at that chart before he testifies.

“Mr. Colegate: Yes, that will be satisfactory. At this point may the record show that Mr. Carson was afforded an opportunity to examine the charts and records, and that he did so. Mr. Carson, there is no objection to the Doctor referring to those, in answering the question which was propounded?

“Mr. Carson: No.

“A. On the first day of hospitalization, in addition to receiving blood plasma, she also received a whole-blood transfusion. She was admitted to the hospital at 7:00 in the morning. Morphine, $\frac{1}{4}$ grain, given at 7:10. Blood plasma was—500 cc.

(Deposition of Dr. W. H. Blackman.)

blood plasma was started at 7:25, and followed with 500 cc of 10 per cent glucose.

“Do you want me to go through this whole thing?

“Q. (Mr. Colegate): I don't think we want to ask you for the exact details; but in substance we would like to know what course of treatment was given to her over that period until she left your care. [305]

“A. The first day she was given a whole-blood transfusion at 11:45. She also received tetanus and gas antitoxin, and was given a general treatment from then on until her condition improved sufficiently that we felt that it was safe to do a prosthetic operation. We did a repair of this amputation by going up to a point approximately 7 inches below the knee joint and removing the bone, rounding it off, and bringing the posterior flap of the heavy calf muscles down over the end of the bone, in order to give the stump padding so that she would be able to wear an artificial limb. Due to the loss of blood at the time of injury, she had developed quite a profound anemia. She received a total of 4 whole-blood transfusions during the time she was in the hospital. At least one of those I believe was given after the repair of this amputation. She ran a low-grade temperature for a while, and we feared at first she might have a bone infection. X-rays were taken, and that was ruled out. After receiving an additional blood transfusion, the temperature finally came back to normal, and the course of her convalescence, in the latter

(Deposition of Dr. W. H. Blackman.)

part of her convalescence, was uneventful. We simply were giving her [306] time to regain her strength before she was dismissed.

“Q. What was the time, please, at which you considered the possibility of bone infection, after you gave the transfusion to which you referred?

“A. May I refer to the X-ray to get the date from that? It was the early part of February, and the latter part of January, that she continued to run a fever; and on the 3rd of February an X-ray of the amputated area did not reveal any sign of bone infection.

“Mr. Carson: What date was that, Doctor?

“The Witness: The 3rd of February, 1943, that an X-ray was taken of the stump.

“A. She was on sulfa drugs at that time, I believe—yes; in fact, we had her on sulfathiazole for the latter part—starting on January 31st she was placed on sulfathiazole, and that was continued up to the time this X-ray was taken on the 3rd, and discontinued when the bone showed no evidence of infection.

“She was also given a great deal of Reticulogen. That is a liver extract that is used for [307] stimulation of blood-building.

“I believe all those transfusions were given prior to the repair of the amputation. When she started running fever again, we started her on Sulphathiazole, and took X-rays, and the temperature came down to normal in a few days' time, and the Sulpha-

(Deposition of Dr. W. H. Blackman.)

thiazole was stopped, and it wasn't necessary to give her a transfusion after that.

"Q. (Mr. Colegate): During the course of your treatment did you fit Mrs. Zane with an artificial limb?

"A. We had a man come down from an Orthopedic Supply House in Los Angeles, Millikin, I believe was his name, and he took the measurements and made an impression of the limb, and sent the artificial limb down after it was made. The impression was taken, it was made, and sent down to her, and only reached her I think just a day or so before she left the hospital.

"Q. Can you tell us when it was the artificial limb arrived?

"A. I believe the day before she left here.

"Q. Did you fit it to her, or apply it?

"A. No. The Nurses helped her put it on, and she tried it with crutches, and she went out of the hospital without it, though. She didn't have [308] it on when she left the hospital. She went out with the crutches, but without the artificial limb being on.

"Q. Did you see her walking with the artificial limb?

"A. No, I didn't. I might add, she was very anxious to leave as soon as the artificial limb arrived; and I suggested that she try it out for a few days, but she was very anxious to leave, and her husband come over after her, and he preferred to take her home and practice using it at home.

"Q. Doctor, during the course of treatment of

(Deposition of Dr. W. H. Blackman.)

Mrs. Zane, did you at any time ascertain any fracture of the neck of the right femur?

“A. No. At the time of admission I made a complete examination of the hip region and pelvis, along with the general examination, and there was no soreness over the hips, or no muscle spasm—nothing to suggest fracture. There was no rotation of the thigh, or shortening, suggestive of fracture—and those are all clinical signs that we look for.

“Q. During your course of treatment of Mrs. Zane, will you tell us whether you had occasion to move and activate her right leg?

“A. A great many times.

“Q. Will you tell us when it was that you had [309] occasion to so do?

“A. No specific times; but in doing the dressings, which are done daily there for the first few weeks of hospitalization, we had to raise the leg, which would naturally cause motion at the hip joint, and there was never any complaint made by her about pain in the hip region at any time.

“Q. You have said that during her daily dressings the first few weeks, you had occasion to move that right leg of hers. Will you tell us, please, Dr. Blackman, whether you had occasion to move, or lift, the right leg after those first few weeks?

“A. During the last few weeks that she was in the hospital, when we were trying to get her up on the crutches, she complained of some stiffening and soreness of the right knee; but we could find no

(Deposition of Dr. W. H. Blackman.)

evidence of any reason for it, other than the fact it had been immobilized for such a long period of time; and even at that time there was never any complaint of pain in the hip, no muscle spasm about the hip, or no pain on movement of the thigh when we raised it up off the bed. In fact, I recall one time—I would say possibly about two weeks before she left the [310] hospital—in which I raised the right thigh pretty well up off the bed, and took hold of the knee and gently manipulated the knee, trying to encourage her to move this stump and knee-joint, and holding her leg up off the bed, and allowing her to do that, helping her move the stump—and she made no complaint about pain in the hip region at all.

“Q. During those last few weeks she was under your care, what, if anything, did you do toward treatment of this stiffness of the right knee of which Mrs. Zane complained?

“A. We advised her to move it as much as possible, and, on occasion—I would say maybe two or three times a week—I checked up with her to see if she was getting motion in the knee, and she was gradually getting improved motion in the knee-joint. I think we used a heat lamp on it, and had the nurses massage the thigh muscles and leg muscles around the knee region.

“Q. Did you during those weeks personally move or flex that knee of Mrs. Zane’s?

“A. Yes, I did.

“Q. Approximately on how many occasions?

(Deposition of Dr. W. H. Blackman.)

“A. Oh, probably on at least half a dozen occasions during the last three weeks she was in. [311]

“Q. Tell us how you did that flexing?

“A. Simply raised her thigh up off the bed and took hold of it, and some of the time had her sit up on the edge of the bed, and took hold of the stump and moved it back and forwards up to the point where it was beginning to hurt; and she was gradually getting normal motion back there.

“Q. Tell us whether—that is, to what extent during those last few weeks you were flexing the knee in the manner you have testified to—you moved or agitated the upper parts of the right leg of Mrs. Zane?

“A. Well, simply as I stated before, in order to move this stump as she was lying down in bed, we had to raise the thigh off the bed in order to move the knee, and that would naturally cause motion in the hip region; and, of course, if she was sitting up on the edge of the bed, the motion of the stump didn't move the hip joint; but the mere act of sitting up in bed apparently caused no pain in the hip region, whereas it usually would in the case of any patient I have ever seen—and I have seen a great many with fracture of the femur neck. They don't like to sit up, and sit square; if they do, they get pain in the hip region. [312]

“Q. Doctor, during those first few weeks that you were daily dressing the leg of Mrs. Zane, tell us what, if any, complaints were made by Mrs.

(Deposition of Dr. W. H. Blackman.)

Zane as to pain or discomfort in the upper part of her right leg.

“A. She never made any complaint about pain in the upper part of her right leg. Her only complaint of pain was the soreness of the stump itself, or of soreness in the knee joint.

“Q. During those last few weeks of the treatment of Mrs. Zane, at which time you were flexing the right knee, what, if any, complaints were made to by Mrs. Zane regarding pain or discomfort in the upper portion of her right leg?

“A. I simply do not recall of her ever having made any complaint whatever as to pain in the right hip region at all.

“Q. Aside from the taking of X-ray pictures, Doctor Blackman, how do you ascertain and diagnose a fracture of the neck of the femur?

“A. The fracture of the neck of the femur, if it is a complete fracture, always results in some shortening of the thigh, and rotation usually outward; that is, the thigh turns out to the side, and the muscle spasm pulling up on it usually causes some shortening, so that even though the [313] lower extremity was off, you would notice the difference in the level of the knees, when they are lying flat in bed. In addition to that shortening and rotation, why, there is always muscle spasm, spasm of the muscles about the hip. Motion of the hip joint—I mean motion of the thigh in any direction usually causes pain to be referred to the hip joint. The symptoms are really quite classical, and

(Deposition of Dr. W. H. Blackman.)

a definite course of symptoms of shortening, rotation and muscle spasm, and pain over the hip, tenderness to pressure over the hip, and pain on motion of the hip.

“Q. During your treatment of Mrs. Zane did you encounter any of those symptoms of fracture of the neck of the right femur which you have referred to in your preceding answer?

“A. No, I did not.

“Q. What, if anything, did Mrs. Zane say to you regarding pain or discomfort in her right hip and upper right leg, during your entire course of treatment of her?

“A. I don't recall that she ever made any complaint about pain in that region.

“Q. Tell us, please, Dr. Blackman, whether in your opinion Mrs. Zane was afflicted with a fracture of the neck of the right femur at any [314] time while she was under your care?

“A. I do not believe so.

“Q. Were you acquainted with a Mr. William Cameron in December of 1942?

“A. Yes, sir.

“Q. What conversations, if any, occurred between Mr. Cameron and Mrs. Zane, at which you were present?

“A. The only conversation that occurred in my presence was probably about two weeks after she was injured. He was down one day, and asked about her condition, and I told him I didn't think she was in any condition to discuss settlement; that

(Deposition of Dr. W. H. Blackman.)

there was a lot of work to be done, her condition wasn't good. He asked if he could meet her, and I told him I would take him in and introduce him, but I didn't think he should discuss terms of settlement at all with her. I took him in and introduced him, and told her he was the adjuster that was investigating her accident——

“Mr. Carson: Pardon me, Doctor. What date was that?

“A. I don't recall exactly. I didn't make any record. I really think it was nearer two weeks after the accident before Cameron ever saw her or talked to her at all, and then it was only [315] just to be introduced to her. I think he told her he was investigating the accident, and wouldn't bother her any at the time; and when she got feeling better, why, he would want to talk to her; but not to worry about things in the meantime.

“Q. (Mr. Colegate): About when did you say, Doctor, that this incident occurred when you introduced Cameron to Mrs. Zane?

“A. I would say approximately around about the 20th of December, probably.

“Q. Aside from that occasion, were there any other times when you were present at any conversation between Cameron and Mrs. Zane?

“A. No.

“Q. Were there any times when Cameron was present at any conversations which you had with Mrs. Zane?

“A. No, sir.

(Deposition of Dr. W. H. Blackman.)

“Q. In other words, the three of you were there together, except the one time you have told us about, is that right?

“A. That is the best of my recollection, the only time the three of us talked together; and that, as I said, was more a matter of introduction than anything else.

“Q. What, if any, directions or orders as to the treatment to be afforded Mrs. Zane did you receive from Cameron?

“A. None whatever, except that she was to be taken care of as a private patient.

“Q. Tell us, Dr. Blackman, whom you represented and acted for in caring for and treating Mrs. Zane?

“A. Myself. I might add here that at the time this accident occurred, some of the patients were taken to our hospital, and some were taken to Dr. Morris at the Casita Hospital. The only connection that I have with the Pacific Greyhound is that the employees of the Pacific Greyhound come under the same medical care plan that the Southern Pacific employees come under, and we take care of the Pacific Greyhound employees, and they bring treatment orders in just the same as though they were railroad employees. We have no other connection with them whatever.

“Q. As far as your treatment and care of Mrs. Zane is concerned, who were you working for?

“A. Working for Mrs. Zane.

“Q. In treating and caring for her, what, if

(Deposition of Dr. W. H. Blackman.)

any, position or capacity did you occupy with the Greyhound Lines?

“A. None whatever, as far as her care was [317] concerned. I even, to be sure of how the thing was to be handled—soon after the accident occurred, I sent Dr. Walker, who was Chief Surgeon for the Southern Pacific Company, a telegram asking if they wished us to report to them in regard to the injuries of these passengers. The reason for that is because——

“Q. (Mr. Colgate): Doctor, you may tell what you did, but your reasons are something you cannot state.

“Mr. Carson: That is right.

“A. I received a wire back very promptly instructing me to take care of them as private patients——

“Mr. Carson: Now, wait a minute. We object to that unless the telegram—we object to it.

“Mr. Colgate: I think whatever occurred between Dr. Walker and the Doctor here is strictly hearsay, as far as that is concerned. That may go out.

“Mr. Carson: Very well.

“Q. (Mr. Colegate): Did you ever discuss with Mrs. Zane the matter of whether you were employed to treat her as agent and representative of the [318] Greyhound?

“A. I don't recall that I ever did. I don't think she ever asked me if I was. I thought that

(Deposition of Dr. W. H. Blackman.)

I made it clear to her that I had no connection with them.

“Q. In your presence did Mr. Cameron make any statement to Mrs. Zane as regards the matter of the Pacific Greyhound engaging, or not engaging you to treat her?

“A. No.

“Q. Do you have your ledger sheets here showing the account of yourself with Mrs. Zane covering the handling of this treatment and care?

“A. Yes, I do have (producing sheets).

“Mr. Carson: Let me look at those, please.

“Mr. Colegate: Let the record show Dr. Blackman has produced three yellow looseleaf ledger sheets. Will you tell us, please, what they are?

“A. Those are simply the bookkeeper's records of the daily charges, and I believe the total charges and credits.

“Q. Are these——

“Mr. Carson: Why don't you let the originals [319] go in?

“Mr. Colegate: I was going to say we might photostat them.

“Mr. Carson: I would rather have the original sheets.

“Dr. Blackman: You would have to get my attorney's permission to let those records leave our possession.

“Mr. Colgate: Is that Wallace Rouse?

“The Witness: No. In Los Angeles.

“(Discussion off the record.)

(Deposition of Dr. W. H. Blackman.)

“Mr. Carson: If you will photostat them, we will agree they may go in that way.

“(Record read by the reporter as follows:

“‘Will you tell us, please, what they are?

“‘A. Those are simply the bookkeeper’s records of the daily charges, and I believe the total charges and credits.’)

“A. Of Mrs. Zane’s record—or should I call it Mrs. Zane’s financial record?

“Q. (Mr. Colegate): You will have to tell us, Doctor, what they were. Are those sheets part of the accounts receivable ledger?

“A. Yes, they are.

“Q. Are they the first original entries of those items that are placed on them? [320]

“A. That is right.

“Q. Under whose supervision were they kept?

“A. Miss Ruth Bastow was the bookkeeper, and they were kept under my supervision. She was the bookkeeper at the time.

“Q. Are they the first original entries of the items placed thereon?

“A. Yes, sir.

“Q. They are part of your official office records?

“A. Yes, sir.

“Mr. Colegate: We wish to have those marked for identification. In order that they may be offered at the proper time, I would like, Doctor, to have photostatic copies made, front and back, of those sheets, so that we may return to you the originals.

(Deposition of Dr. W. H. Blackman.)

“The Witness: All right.

“Mr. Colegate: I take it, Mr. Carson, as far as the photostatic copies are concerned, there is no objection on the ground that the photostatic copies, rather than the originals, might be appended to the deposition?

“Mr. Carson: No. That is all right. They will be true and correct photostatic copies. [321]

“The Witness: We can have them photostated right here in town.

“(Which said photostatic copies were thereupon marked as Exhibits for identification.)

“Q. (Mr. Colegate): Will you tell us, please, Doctor Blackman, in whose name that account appears on your books, according to those sheets?

“A. Mrs. Zoa Zane, 1921 Portland, Phoenix, Arizona.

“Q. What is the total amount of charges shown thereon, if you have them totalled?

“A. \$1467.00, I believe.

“Q. As of what date?

“A. That was February 19th, I believe it was totalled to. I have another itemized statement, I believe, a copy of an itemized statement in the file.

“Q. What, if any, credits are shown on that record toward the account?

“A. \$1467.00.

“Q. On what date?

“A. It doesn't look like she has dated it. Then there was another credit made on the day she left

(Deposition of Dr. W. H. Blackman.)

the hospital. The balance from February 19th to March 8th, the Zanes paid for by separate check.

“Q. What is the amount of that latter credit?

“A. \$140.90.

“Q. When was that credit made?

“A. On March 8th.

“Q. Well, then, Doctor, don't the total charges exceed the \$1467.00?

“A. The date that settlement was made was February 19th, and Mrs. Zane paid for the balance of the period of hospitalization herself, directly by her own personal check.

“Q. Then there were additional charges of \$140.90 after that date?

“A. That is right.

“Q. And were paid for as stated by you?

“A. That is right.

“Q. Were you present at any time when Mr. Cameron discussed with Mrs. Zane the settlement of her claim?

“A. No, I was not.

“Q. Were you present at the time Mrs. Zane executed any release in connection with her injuries?

“A. No.

“Q. Were you present at the time when Mr. Cameron delivered any drafts or check to Mr. or Mrs. Zane?

“A. No. [323]

“Q. Did you ever have any discussions with Mr. Zane during this period that his wife was

(Deposition of Dr. W. H. Blackman.)

under your care in regard to settlement of the claim of *Mrz. Zane* against the Greyhound?

“A. No, sir.

“Q. To what extent, if any, did you see Mr. Zane present at the Coachella Valley Hospital during the time Mrs. Zane was under your treatment?

“A. I only saw him two times, I think, at the hospital. Once was either the 2nd or 3rd day of her hospitalization, and the other time I think was the morning that she left the hospital.

“Q. Do you remember what, if any, conversations you had with Mr. Zane on the first of those occasions?

“A. The first occasion I simply informed him as to her injuries, and the fact that we had had to amputate her foot, and that it would require secondary repair, and her condition was still rather critical, but I felt she would probably survive.

“Q. Anything more to that first conversation which you recall?

“A. I don't recall that there was much more to it than that.

“Q. Do you remember what, if any, conversation [324] in substance, you had with Mr. Zane at the time Mrs. Zane was leaving the hospital?

“A. Practically no conversation with him on that day. They had the drafts there in settlement, and they were endorsing those drafts; and I don't recall having any particular conversation with him at the time.

“Q. Was Mr. Cameron there at that time?

(Deposition of Dr. W. H. Blackman.)

“A. No. He had been there, I think, the day before. This was the morning after they had received the drafts.

“Q. When next after Mrs. Zane’s departure from the hospital did you have any conversation with Mr. Zane?

“A. It was in October of 1943, I believe. I think it was approximately October 12th. However, I am not certain, without checking that back. He called me at my home, long-distance, from Phoenix, and the same evening he also called the Hospital and talked to the Nurse there.

“Mr. Carson: Now, wait a minute. Don’t repeat any conversation with the Nurse.

“Q. (Mr. Colegate): He talked to you just the one time? [325]

“A. Yes.

“Q. You tell, if you will, please, the substance of the conversation, as best you can, that was had between you and Mr. Zane at that time.

“A. At the time I received this long-distance call Mr. Zane came on the line and told me who he was. It was very difficult to understand him; his speech was thick and slurring, and I had a great deal of difficulty in finding out just what he was calling about, and finally obtained information that Mrs. Zane was then in the hospital in Phoenix, under care of some doctor over there, and he stated that the doctor found that she had a fracture of the right hip, which we had overlooked, and that—he went on with quite a long discourse

(Deposition of Dr. W. H. Blackman.)

to the effect that we held ourselves out to be good and up-to-date doctors, but that we failed to find this condition, and that she was unable to use the artificial limb; was then in the hospital, and would have to be for some time, and would have to have an operation that would be very expensive, and that they had no money to take care of it—and wound up by threatening to sue me and sue the hospital.

“Q. Doctor, rather than saying he ‘threatened’, [326] tell us, if you can, substantially what he said, rather than what you concluded.

“A. As near his own words as I can put it, he said, ‘I am going to sue you and your god-damn hospital, and when I do, the whole State of Arizona will be backing me up.’

“Q. Anything more of that conversation that you recall?

“A. I told him then that since he was making a threat of that nature, that we couldn’t discuss the case any further, and he would have to talk to my legal representatives. He attempted to go on, and I told him I would have to hang up on him, if he didn’t cease talking, because there was nothing further for us to discuss.

“Q. Tell us, please, whether on February 19, 1943, Mrs. Zane was being administered narcotics?

“A. She was not.

“Mr. Carson: Does he know whether she was administered narcotics?

“Mr. Colegate: He said she wasn’t.

(Deposition of Dr. W. H. Blackman.)

“Q. Did you see Mrs. Zane on February 19, 1943?

“A. Yes, I did. [327]

“Q. On that day, to your knowledge was she under the influence of narcotics?

“A. No. She hadn't received any for some time.

“Q. Was there anything irrational about her conduct at that time?

“A. No.

“Q. Tell us her mental state, as you observed it on that date?

“A. Perfectly normal, as far as I could observe.

“Q. What, if any statements, Doctor, did you make to Mrs. Zane during the time she was under your treatment regarding any other fracture about her body, other than those below the right knee?

“A. I think soon after admission she asked if she had any other fractures, and I told her that she did not have.

“Q. Did you at any time state to her she had any other fractures about her body?

“A. I don't recall of doing so.

“Q. You don't recall any representation in that regard?

“A. No.

“Q. What, if any, conversation did you have with Mrs. Zane regarding the extent of the use she might have of the right leg upon being fitted with an artificial member?

“A. At first she was very worried and despondent about the fact that she would have to wear an

(Deposition of Dr. W. H. Blackman.)

artificial limb; she guessed she would have to wear slacks the rest of her life; and I told her I didn't think that was the case; that modern artificial limbs were made so cleverly that many people wore them without it being known, and, in fact, some people became so skilled in their use that they could use them practically as well as their own member; that it was a matter that time would tell, of course, as to whether she acquired that amount of skill or not.

“Q. About when was it you had such a talk with her?

“A. Oh, probably a month or so after she first came in. We were talking one evening, and she was a bit despondent, sort of felt she was maimed for life and wouldn't be able to wear dresses, and act as a normal individual. I tried to reassure her by telling her that modern appliances were very difficult to detect, and some people really did become very skilful in using them, so that sometimes their best friends didn't even know they had an artificial limb. [329]

“Q. What, if any, discussions did you have with her regarding the specific results that might be obtained in her case with an artificial limb?

“A. I told her that that probably would depend largely on the individual case; that I couldn't say that she would be able to run a foot race, or dance, like some people do who wear artificial limbs; but that with practice she could probably acquire skill. It would take her some time to become accustomed

(Deposition of Dr. W. H. Blackman.)

to the limb, and that it might have to be readjusted to her, as the stump went through a normal amount of shrinkage, and that in time she probably would become quite adept in its use.

“Q. Did Mr. or Mrs. Zane ever inquire of you as to whether there were any other injuries to Mrs. Zane beyond those which you had treated?

“A. Not that I recall—that is, the two of them together didn’t, the time I mentioned a while ago. I believe Mrs. Zane did ask if she had any other fractures, and I assured her there was no evidence of any other serious injuries at all other than this foot and leg that she lost.

“Q. About when was that conversation between you and Mrs. Zane, Doctor? [330]

“A. It was not so very long after admission; probably a week, maybe a couple of weeks after admission.

“Q. At the hospital? A. Yes.

“Q. Did you have any conversation with either Mr. or Mrs. Zane regarding the terms of the release which they executed to the Greyhound?

“A. No, I didn’t have.

“Q. Did you have any conversation with either of them regarding the effect and meaning of the release that they gave the Pacific Greyhound?

“A. I didn’t discuss it with them at all.

“Mr. Colegate: You may cross-examine.”

The Court: We will have a recess at this time.

(Thereupon a short recess was had.)

(Deposition of Dr. W. H. Blackman.)

After recess, all parties as noted by the Clerk's Record being present, the trial resumed as follows:

(Mr. Terrence Carson assumed the witness stand and reads the answers contained in the Deposition on cross-examination; the questions therein being read by Mr. Stahl.) [331]

Mr. Stahl: This is the Cross Examination of Dr. Blackman by Mr. Carson.

“Cross Examination

By Mr. Carson:

“Q. Doctor, when Mrs. Zane first came to your attention, did you have any conversation with any representatives of the Greyhound as to how you were to be paid?

“A. Only to the effect that they would attempt to protect us when the settlement was made, in this way: That if she agreed to a settlement, that they would attempt to make the settlement for the hospital bill a separate check, payable to the Zanes and the Hospital and myself, so that they could endorse it over to us. But there was no agreement whatever—there was no contract between them and us. We were just holding the sack, as it were, and depending entirely upon the good will of the Zanes to pay the bill after they received a settlement.

“Q. Did Mr. and Mrs. Zane tell you their financial condition, when they first came in the hospital, or when you first saw Mrs. Zane?

(Deposition of Dr. W. H. Blackman.)

“A. No, I don’t think any inquiry was made about that. [332]

“Q. You are sure there was nothing said that they would be unable to pay any hospital or doctor bill? Would you say that is right, Doctor?

“A. I don’t think anything was said to that effect.

“Q. Did you make any inquiry?

“A. I didn’t, personally, no.

“Q. Did the hospital make any inquiry?

“A. I don’t know that they did. An action of this nature, where an insurance company and somebody is involved, we usually rely on the insurance company to try to protect us, and we don’t force the issue as we would if it were a case of someone who had just been injured in their own automobile, where we make much more inquiry than we would in a case like this.

“Q. You are sure Mr. and Mrs. Zane told you they had no money, and couldn’t pay any money, when they first came in?

“A. They may have told one of our representatives, but they didn’t tell me that. I am not certain but what Mrs. Zane may have—come to think about it, I think Mrs. Zane did possibly, on one occasion, ask me about the hospital bill soon after she came in, and seemed to be worried about it; but I told her not to worry about that [333] at present; to just focus her attention on trying to get well, and let somebody else worry about that for the time being.

(Deposition of Dr. W. H. Blackman.)

“Q. Doctor, did you ever have any conversation with Mr. Cameron in regard to this total bill? Was it to be fixed at \$1,000.00, or any other sum?

“Mr. Colegate: Excuse me, Mr. Carson. I assume, under these rules of the United States District Court all objections, such as the objection that agency or authority is not shown, are reserved until the time of the trial, and we don't have to object at this time?

“Mr. Carson: I think so.”

Mr. Baker: We renew the objection upon the grounds that it is hearsay and purely irrelevant insofar as the Greyhound Lines is concerned.

The Court: All right, you may answer.

Mr. Stahl: The witness didn't answer the question so he asked another question along the same lines.

The Court: All right.

“Q. Did you ever have any conversation with Mr. Cameron as to how much you were to be paid for the entire work, Doctor?”

Mr. Baker: The same objection. [334]

The Court: He may answer.

“A. Yes. On one Sunday, I think it was in January of '43, he was down, and wanted to know if he couldn't make a settlement with me in advance—an agreement that our entire bill for hospitalization and doctor's services wouldn't exceed a thousand dollars; and I told him that I thought his request was entirely unreasonable; that I would most certainly refuse any such agreement, without

(Deposition of Dr. W. H. Blackman.)

consulting our bookkeepers; that I didn't even personally know at the time what the hospital total bill had reached; and he asked me to consider that and let him know.

"The next day, after talking with the bookkeeper, I wrote him a very definite refusal, and told I saw no reason why we should make any such settlement; that as far as we were concerned, the bill would have to go on the basis of the usual rates, and that is the method it would go on, and we wouldn't consider making any cut-rate settlement with him, if the bill went over a thousand dollars.

"Q. Doctor, do you ever remember discussing that particular question of how much it was to be, right near the door of the room where Mrs. Zane was a patient, with Mr. Cameron? [335]

"A. No. It was in a room fully 50 or 60 feet away from her room, and the doors were closed in between—at least the door was closed in the room we were in.

"Q. Did you ever inform her of some misunderstanding about the doctor bill, or did Mr. Cameron, that you know of?

"A. I certainly didn't. I don't know whether Cameron did.

"Q. Do you know how she learned of this conversation?

"A. Not from me.

"Q. Doctor, when she first entered the hospital, did you give her any assurance at all that she need not worry about the hospital bill; that the Grey-

(Deposition of Dr. W. H. Blackman.)

hound would take care of it? Did you have any such conversation with her?"

Mr. Baker: If the Court please, I object to this on the ground that it is the same type of testimony, any conversation between Doctor Blackman and the plaintiff would be purely hearsay insofar as this Defendant is concerned; irrelevant, incompetent and immaterial.

The Court: The answer may be read.

"A. Only to this extent: As I stated before, when she was worried about the bill, I told her not [336] to worry about that; that probably she, of course, would receive some sort of a settlement sufficient to take care of it, but that I didn't speak for the Greyhound. However, that we were willing to take a chance, and the main thing for her to do was to get well, and we wouldn't worry about the financial arrangements at that time.

"Q. Doctor, do you know how many times, or how often Mr. Cameron would come down to see her in the period of almost three months—I mean two and a half months?

"A. Oh, he was down here several times. I don't believe he talked to her more than three times. He was down here in connection with these other cases that were in the other hospital, and sometimes dropped in and asked how she was getting along.

"Q. I will ask you if it isn't true that he was out here almost once or twice a week for nearly every week while she was a patient in the hospital?

"A. I don't believe so.

(Deposition of Dr. W. H. Blackman.)

“Q. Doctor, do you remember an occasion shortly after she was admitted to the hospital, that some patients were being removed to Los Angeles; there was some discussion between Mrs. Zane’s husband and you about whether or not it was [337] advisable to take her to Los Angeles to a hospital?

“A. I don’t recall discussing it with her.

“Q. You had no such conversation or inquiry?

“A. Not with Mr. Zane, I am sure.

“Q. Or Mrs. Zane?

“A. I don’t think I had with her either.

“Q. Was there any suggestion, when Mr. Zane came, that—did he inquire, or suggest, that the facilities in a Los Angeles Hospital were probably better for such a serious case?

“A. I don’t recall that he did.

“Q. You don’t recall?

“A. No.

“Q. You don’t know whether Zane talked with any of the other doctors about that, do you?

“Mr. Colegate: That was in Dr. Blackman’s presence?

“A. Not in my presence.

“Q. (Mr. Carson): Do you know whether he talked with your partner about it at all?

“A. I couldn’t say as to that. He may have talked with him. Pardon me just a minute. This is off the record.

“Mr. Colegate: In this testimony you are only entitled to tell what you know of your own [338] knowledge; so answer the question the best you can.

(Deposition of Dr. W. H. Blackman.)

“Q. (Mr. Carson): Doctor, did Mrs. Zane ever inquire of you whether or not any other bones were fractured in her body? Do you remember any occasion?

“A. The only occasion was, soon after hospitalization she asked if anything else was injured, and I told her no evidence of any other serious injury at all.

“Q. You didn’t x-ray her leg—I mean her right hip?

“A. No, I didn’t.

“Q. Were you pretty busy at that time?

“A. Well, pretty busy all the time. We were naturally quite busy the morning of the accident. We weren’t unusually on the subsequent days or weeks, any more than usual.

“Q. Were some of the people that were injured in the accident taken to Los Angeles or San Bernardino?

“A. I don’t recall for certain. There weren’t any other serious injuries, and as nearly as I can recollect, I don’t believe we transferred anyone because of their injuries. They may have gone on to Los Angeles and been referred to a doctor there for follow-up care, removal of sutures, [339] or something like that; but there were none definitely referred out for care, except for the fact that they wished to go on with their journey, they wished to return to L. A. or somewhere else.

“Q. Doctor, don’t you think it would probably

(Deposition of Dr. W. H. Blackman.)

have been advisable, in a case like that, to have x-rayed the hip?

“A. I see no reason why, when there were no physical signs, and no complaint relative to the hip at all. Of course, the ideal situation, I presume, with any accident, would be to x-ray everything from the top of the head down to the feet. But it isn’t practical; and unless there are some signs of injury, they don’t usually do it.

“Q. You said she was running a fever some time along in January, Doctor. I think you described that. What date was that?

“A. Yes, there was a little drainage from the soft tissues of the stump. There had been an abrasion of the skin, and it had a slight infection, and we finally decided that was the cause of the fever, because when this little infected abrasion cleared up, her fever subsided, and she didn’t have any more fever.

“Q. Do you think the giving of sulfa drugs had anything to do with reducing her fever? [340]

“A. It helped—it was really just a superficial infection, and it undoubtedly helped clear it up.

“Q. Doctor, is it easy to fracture a hip?

“A. No. Usually not, in a young person. It usually requires violence, a fall. One of the commonest means of getting this type of a fracture is a fall on the hip, falling on the point of the hip.

“Q. Could it have been, Doctor, possibly true that she did have a fracture of the hip along in January, and that was the cause of the fever?

(Deposition of Dr. W. H. Blackman.)

“A. No.

“Q. It couldn't have had any connection with it at all?

“A. No, it wouldn't have—I don't believe it could have been possible. Every person has fever, due to a fracture, it is a closed fracture, with no compounding of the fracture. Fever usually subsides within a day or two, or a very few days, and it is usually a very low grade fever, subsides quickly, and occurs only immediately after the fracture is sustained, and not a month to a month and a half afterwards.

“Q. Did Mrs. Zane ever discuss settlement at all with you, or was anything suggested about [341] settlement?

“A. She asked me, I think, in January, for my opinion as to what she should receive in the way of settlement, and I told her I hadn't the slightest idea; that I just didn't know what basis those cases were settled on, and I wouldn't even know how to begin to give her an estimate of what she should receive in the way of settlement.

“Q. Did you ever suggest to her, Doctor, that \$15,000 would be a good settlement?

“A. No. I never mentioned any figure to her whatever. In fact, I very carefully avoided it.

“Q. Doctor, this account is in the name of Mrs. Zoa Zane, and not in the name of her husband, is it?

“A. No.

“Q. When you keep accounts, do you keep—when

(Deposition of Dr. W. H. Blackman.)

a woman is married, do you generally keep it in the name of the husband or the wife?

“A. Usually keep it in the patient’s name. If it is a minor, sometimes one of the party’s name is put on there.

“Q. When you bill them, do you send the bill to the wife or the husband, generally, when you keep them in the wife’s name?

“A. We send them direct to the individual. [243]

“Q. To the individual. Who would be the individual—the husband or the wife?

“A. Well, in a case like this, the patient I should say.

“Q. You wouldn’t look to the husband for any liability in the case, then, as to the payment of the bill?

“A. Well, we don’t have any fixed rule in regard to that matter, I don’t believe.

“Q. Now, Dr. Blackman, this shows a charge to Mrs. Zoa Zane. How much of the bill did the Greyhound actually pay you for your services?

“Mr. Colegate: That is assuming facts not in evidence, to-wit: That the Greyhound paid him for his services. I don’t know whether that is necessary.

“Mr. Carson: He can answer the question, if it was.”

Mr. Baker: Just a minute, there has already been an objection. The objection, I think, is sound. We object to this question on the grounds that it is assuming a fact not proven in the case; that is, that

(Deposition of Dr. W. H. Blackman.)
the Greyhound Lines actually paid him anything for the services.

The Court: You may read the answer. [343]

“A. Let’s put it this way: The Pacific Greyhound issued a draft in the amount of \$1467.00, payable, if I remember correctly, to Mrs. Zoa Zane, Jack Zane, her husband, Coachella Valley Hospital, and Dr. W. H. Blackman.

“Q. Do you own a part interest in the hospital, here, Doctor?

“A. Yes, sir.

“Q. How much of an interest do you own?

“A. A half interest.

“Q. The Greyhound actually paid you up to the time of the day of the release, for medical services and hospital bills, did they not?

Mr. Baker: We make the same objection, assuming that the Greyhound Lines did pay.

The Court: He may answer.

“A. They paid it in that way, by this draft; but we couldn’t have cashed it without their endorsement.

“Q. But nevertheless, they paid it; that is, you got your money in that way?

“A. Yes, sir.

“Q. After that, you received a check for \$140.90 from them direct, did you not?

“A. By check. I think Mrs. Zane wrote the check, if I remember correctly. [344]

“Q. Did you ever discuss at all with Mr. Cam-

(Deposition of Dr. W. H. Blackman.)

eron the question of the payment of the hospital bill, up to the time of the release?

“A. Only in this way: That he assured me they would make every effort to protect us by writing the check payable to all parties concerned.

“Q. Doctor, how long have you handled business for the Greyhound here?

“Mr. Colegate: Excuse me. That is objected to as assuming facts not in evidence.

“Mr. Carson: You can make your objection; but I think he can answer the question.

“Mr. Colegate: Well it is not clear as to what you mean by handling business for the Greyhound. He said he treated their employees.

“Mr. Carson: You went into that directly, and I have a right to cross-examine. I will put the question this way:”

Mr. Baker: That is objected to on the grounds it is assuming a fact not proven in the case.

Mr. Stahl: He made no answer to that, did he?

Mr. Baker: No.

Mr. Stahl: “Q. Doctor, how long have you been treating—that is, people who have been [345] injured in wrecks by the Greyhound—or how many have you treated, and how long have you been treating them?

“A. Well, ever since I have been in Indio.

“Q. How long has that been, Doctor?

“A. Since September, 1936.

“Q. You have been treating patients——

“A. Some of them.

(Deposition of Dr. W. H. Blackman.)

“Q. For the Greyhound?

“A. Some of them. Not all of them. They are at liberty to go where they please.

“Q. How many patients have you treated during that period of time? Do you have any idea at all, Doctor, how many a year, or how many a month?

“A. No. It is really rather infrequently that we are called on to treat passengers. Probably not even one a month.

“Q. Have you ever treated any patient in any other wrecks except this one?

“A. Yes. There was another bus accident. In fact, I think there were two other bus accidents in which we had groups of people brought in with just minor injuries; nothing serious.

“Q. Taken to the hospital where you own a half interest? [346]

“A. I think, on those occasions also, we received part of the patients, and some probably went to the other hospital.

“Q. May I ask who paid for this? Was it the Greyhound?

“A. I think so. I think some of them have been unpaid, and still are.

“Q. Now, Doctor, in regard to Mr. Cameron's discussion of a thousand dollars. How did he come to do that, do you remember?

“A. I couldn't understand that at the time and I still don't.

“Q. You still don't understand it?

“A. No.

(Deposition of Dr. W. H. Blackman.)

“Q. Doctor, I assume if he was going to pay the medical bill, if it was unlimited, he wouldn’t have asked such a question, would he?”

“Mr. Colegate: That is objected to as calling for a conclusion of the witness, as to what Mr. Cameron may have had in mind.

“Mr. Carson: That is probably right.”

Mr. Baker: That is objected to on the ground that it is argumentative and also calls for a conclusion of the witness.

Mr. Stahl: It was not answered.

Mr. Stahl: “Q. Do you remember the exact [347] conversation you had with Mr. Cameron, what he said in regard to trying to limit the amount to be paid, Doctor?”

“A. I don’t remember the exact conversation, except that he made that suggestion, and I told him I couldn’t understand why he should make such a suggestion; that I couldn’t get his viewpoint, or find out what he was driving at, or why.

“Q. Doctor, I notice that in the bill included after time of settlement—what are these charges for—a dollar and a half—do you know what they are for?”

“A. Probably for some of the injections of Reticulogen, or liver extract she received. But that is just an assumption. I don’t know for sure. They frequently just make a flat charge for medicines over a period of time. They may have included any other medicine she received.

“Q. Now, Doctor, I think you testified a while ago that Mrs. Zane asked you about the fitting of

(Deposition of Dr. W. H. Blackman.)
an artificial limb. When did you first discuss this artificial limb with her, do you remember?

“A. I don’t remember the exact time or date.

“Q. On how many occasions?

“A. Well, I do recall discussing with her the [348] possibility of either waiting until she was able to leave the hospital and letting her go either to Los Angeles, or return to Phoenix, and have an artificial limb fitted; or seeing if we couldn’t get some representative from the supply house down here to fit the limb, or take the measurements and have the limb made before she left.

“Q. Who brought that man down from Los Angeles?

“A. So far as I know, he came down by himself.

“Q. How was the knowledge imparted to the representative that she was injured?

“Mr. Colegate: That is, to the extent you may know about it.

“Q. (Mr. Carson) If you do know, Doctor.

“A. We wrote one of the Supply Houses, and I had a conversation with a representative on the ’phone after he had received my letter, relative to it; and they said they would send a man down there.

“Mr. Colegate: Doctor, we would save a little time if you would leave out what somebody told you. That is hearsay. Likewise, leave out your conclusions as to what you thought.

“Mr. Carson: My friend, I can’t agree with [349] you on the theory of evidence. I think any conversation he had is clearly admissible in evidence.

(Deposition of Dr. W. H. Blackman.)

“Mr. Colegate: If the question calls for that. For instance, here he recites some hearsay, which simply clutters up the record.”

Mr. Baker: We wish to make an objection, Your Honor please, on the ground that it was hearsay.

Mr. Stahl: It was not answered.

Mr. Stahl: “Q. (Mr. Carson) Now, you said you had a conversation on the telephone with him. Did you have a conversation with him yourself, Doctor?”

“A. Yes, sir.

“Q. He came down?”

“A. That is right.

“Q. Did you ever suggest to her, Doctor, that she probably could walk, and her hip would be as good as normal, with an artificial limb?”

“A. Only indirectly, at the time I mentioned some people did become skilful in the use of artificial limbs.

“Q. Were you in the room when some pictures were shown of some people dancing, when the representative was down here? [350]

“A. I believe I had a folder—at the time we were talking, I think I had a folder advertising a certain type of artificial limb, in which it showed the man sprinting, or dancing, and various stunts with it.

“Q. Mrs. Zane is a very young woman, I think she was 22 years old at the time?”

“A. 23 at the time, I believe.

(Deposition of Dr. W. H. Blackman.)

“Q. There was some conversation, though, that she probably could use an artificial limb?

“A. Surely.

“Q. Doctor, assuming there could be a mistake as to the hip being broken, she probably could have worn an artificial limb, could she not, if in truth and fact her hip was fractured at the time, and that would prevent the use of an artificial limb, would it not, if it were fractured, if the hip were fractured?

“A. It would, unless she got union of the fracture. Of course——

“Q. What if a subsequent operation——

“Mr. Colegate: The witness hadn't finished.

“Q. (Mr. Carson): Go ahead, Doctor.

“A. Of course, if there was non-union, she wouldn't be able to bear weight.

“Q. What do you mean by ‘non-union?’ [351]

“A. Failure of a fracture to heal.

“Q. Assuming these facts to be true, in this hypothetical question, that there was a graft, bone graft tried to make a union of the hip, or the fracture, and subsequently failed, it would be rather difficult, under those facts, to use an artificial limb, would it not?

“A. Yes; you would still have a non union.

“Q. When there is non union, that socket slips up and down and rotates?

“A. The motion at the fracture point here—this is the head of the femur, and the motion is up

(Deposition of Dr. W. H. Blackman.)

and down here at this point (referring to diagram in book).

“Q. I understand.

“A. And when the weight comes down, this slides up. An artificial limb could be made with a modification so that a ring comes around here, and a person could still use an artificial limb—but, of course, not as well as though you had a solid union. I might add that in such a hypothetical case, where a bone graft failed to give union, one could resort to a fixation operation which would give a stiff joint, and still allow weight-bearing and the use of an artificial limb.

“Q. That would require a stiffening of the [352] joint?

“A. More recently, the Army and Navy have removed the head from the socket, and put one of these metal plates over the end of the fractured point, and they claim they are getting weight-bearing and some function with motion.

“Q. She was given back rubs up to the time she left, was she not, alcohol back rubs?

“A. That is part of the daily nursing care.

“Q. I see. On the 3rd day of March you exercised her leg, I think the record shows here, in a chair, knee exercise. A. That is right.

“Q. Doctor, referring to this right here in the chart, on the 9th day of February: What does this mean?

“A. This is that Reticulogen. It is an extract of liver with vitamin B complex, which stimulates blood formation. You very frequently find a per-

(Deposition of Dr. W. H. Blackman.)

son who has lost a great deal of blood, will respond very nicely to that and build their own blood, so you don't have to do quite so many transfusions. Of course, transfusions are of immediate benefit, but it seems to have a tonic beneficial effect in regard to blood formation.

"Q. Doctor, I think you stated a while ago [353] you treat some of the Pacific Greyhound employees here, do you? A. Yes.

"Q. Do they run in here? Some of the drivers stay here?

"A. Yes. That is—I guess you would call it a sort of Division Point. They run from here to Phoenix, I believe, and from here to Los Angeles.

"Q. They are under your medical supervision, some of the drivers, are they?

"A. All of the Pacific Greyhound employees, and all Southern Pacific employees, carry under a plan whereby they have a payroll deduction, and they are entitled to medical care and hospitalization, and the S. P. Hospital Department appoints doctors around various localities on their lines as district surgeons to take care of as much business on the spot so they don't all have to go in to the general hospital in San Francisco.

"Q. Doctor, did you learn anything about the nature of the accident when the patient was admitted?

"A. Yes, from some of the Highway Patrol officers. They told me what had apparently happened——

(Deposition of Dr. W. H. Blackman.)

“Mr. Colgate: Excuse me. I think Mr. [354] Carson means did you learn it from any of the parties to this case. What the Highway Patrol officer said, of course, would be hearsay.

“A. Some of the other passengers on the bus, with minor injuries, told us something of the accident.

“Q. (Mr. Carson): There is an entry here made on admission, ‘Injured while riding on a Greyhound bus. Right front portion of bus was demolished when it crashed into the rear end of a truck which it was attempting to pass. Patient suffered severe multiple compound fracture of right foot and ankle, and almost complete traumatic amputation of ankle. Blood supply and nerve supply to foot destroyed by the crushing injury.’ ‘The admission diagnosis:’—that shows in the history, does it not?

“A. Yes. That is my own writing.

“Q. (Reading):

‘1. Traumatic amputation of right foot at level of ankle joint, with compound fractures of both bones of leg at approximately 3 inches above the ankle joint.’

“That must naturally have been a very, very severe accident and severe blow?

“A. Yes. [355]

“Q. Could it have been possible, Doctor, that her knee was—well, put it this way: Would it have been possible for her to have fractured her hip joint in such an accident?

(Deposition of Dr. W. H. Blackman.)

“A. It would be possible, with such a severe trauma. But she certainly would have had some symptoms of such a fracture.

“Q. Did you ever at any time discuss the question of settlement with Mr. Cameron, what she was going to get?

“A. I believe on the day of settlement Mr. Cameron came down here to the office and told me what they had settled for.

“Q. Did he tell you he had given her a draft payable to you and the hospital and somebody else, for over a thousand dollars?

“A. He either came down or called me on the 'phone from the hospital, and told me. I am not sure which. I believe he was down here to the office and said he had left the drafts with them.

“Q. After settlement was made, did you ever see the representative of the artificial limb company trying to fit an artificial limb on the patient?

“A. No.

“Q. Doctor, did you ever assure Mrs. Zane at [356] any time that she would be all right; that she would be able to be a normal person, be a normal wife, and would be able to get around if she had an artificial limb?

“A. Yes, I think I did tell her that I thought she would be able to live a fairly normal life; that she just mustn't be too self conscious about this artificial limb; that if she didn't tell people about it, most of them wouldn't know it, or suspect it.

“Q. Did you ever have any conversation with

(Deposition of Dr. W. H. Blackman.)

her about taking care of the babies, or doing house-work, or doing things like that? Did she ever make any inquiry about that?

“A. No, not specifically, except that as I said a moment ago, I think I did assure her she would probably be able to live a fairly normal life.

“Mr. Carson: I think that is all.”

Mr. Baker: I will read the further Redirect Examination of Dr. Blackman.

(Mr. Baker resumed the witness stand to read the answers; Mr. Whitney reading the questions:)

Mr. Whitney:

“Mr. Colegate: I think I would like to ask this one question which I omitted from the direct. [357]

“Q. Doctor, would the wearing of an artificial leg by Mrs. Zane, and the bearing of weight on it, cause her pain at the site of the fracture, if she had been affected with a fracture of the neck of the right femur at the time she left your care?

“A. Yes, the bearing of weight would cause pain.

“Mr. Colegate: That is all.

“(Stipulated by and between the attorneys for the respective parties hereto that the signature of of the witness to the foregoing deposition may be waived.)”

Thereupon the deposition of Mrs. Gladys Payne was read.

“In the District Court of the United States
for the District of Arizona

“Civ. No. 642

“ZOA H. ZANE and JACK ZANE, her husband,
Plaintiff,

vs.

“PACIFIC GREYHOUND LINES, a corporation,
Defendant.

“Deposition of Mrs. Gladys Payne.

“Be It Known, That pursuant to the Stipulation [358] for Taking Depositions, hereto attached, and on the 21st day of February, 1945, at the office of Dr. W. H. Blackman, 519 Miles Avenue, in the City of Indio, County of Riverside, State of California, before me, Charles H. Shaw, a Notary Public in and for said County of Riverside, State of California, duly commissioned to administer oaths, personally appeared Mrs. Gladys Payne, called as a witness by the defense in the above entitled cause, who, being by me duly sworn, was interrogated by Roy W. Colegate, Esq., Attorney for the Defendant; the Plaintiffs being represented at the taking of the within deposition by Terrence A. Carson, Esq., of counsel for Plaintiffs, whereupon the following testimony was taken and proceedings had:

MRS. GLADYS PAYNE,

having been duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, deposed as follows:

“Direct Examination

By Mr. Colgate:

“Q. Your name is Mrs. Gladys Payne?

“A. Yes.

“Q. You live where, Mrs. Payne?

“A. 421 Oasis, Indio.

“Q. What business or profession do you [359] follow?

“A. I am a practical nurse.

“Q. For what length of time have you followed that profession?

“A. About 12 years.

“Q. Were you associated with the Coachella Valley Hospital here at Indio during the period from December of 1942 until March of 1943?

“A. Yes, I was.

“Q. As a matter of fact, I believe you are still associated with the hospital? A. I still am.

“Q. For what length of time have you been associated with the Coachella Valley Hospital here at Indio?

“A. I started working for them in 1936, but I haven't worked steady. I have been gone a few months at different times.

“Q. Did you become acquainted with Mrs. Zoa Zane at the Coachella Valley Hospital in December, 1942?

(Deposition of Mrs. Gladys Payne.)

“A. I was on duty then. That is when she came into the hospital.

“Q. I believe that was on December 10, 1942. Do you recall the date, Mrs. Payne?

“A. I believe it was the 10th or 11th. [360]

“Q. Were you there at the Hospital from that time on until Mrs. Zane left, which I believe was on March 8, 1943? A. Yes, I was.

“Q. In what capacity were you at the hospital during that period?

“A. Well, I do general duty, floor duty there.

“Q. Were you on duty each day during that period?

“A. Six days a week. I just work six days a week.

“Q. During that period from December 10, 1942, until March 8, 1943, you were on duty six days each week? A. Yes, I was.

“Q. During what hours, Mrs. Payne? Can you tell us?

“A. As well as I remember, I worked all that time from 7:00 until 3:00. Sometime we have to change shifts, but I can't remember changing any at that time.

“Q. During that period what, if any, services or attention did you render to Mrs. Zane at the hospital?

“A. Well, some mornings—not every morning—we don't have the same patients every morning; we [361] change around different rooms—but some mornings I bathed her, and rubbed her back and changed her linen.

(Deposition of Mrs. Gladys Payne.)

“Q. Did you also have occasion to assist her in using bedpans and things of that kind?

“A. I did.

“Q. You said you changed around so that on different days you took a different group of patients?

“A. That is the way we do, yes.

“Q. How frequently during that period did you have Mrs. Zane in your group of patients?

“A. Well, I couldn't say definitely, because I can't remember.

“Q. Would it be a third of the time, or a fourth of the time, or half of the time? In other words, how many groups of patients did you alternate between during that period?

“A. Well, we usually have about three; but I just couldn't say definitely what portion of the times I would have her.

“Q. Would you say you had her as much as one-fourth of the time? A. Yes, I would.

“Mr. Carson: I think this is leading.

“Q. (Mr. Colegate): Tell us, if you can, any [362] portion or range of portions of time you had her in your group?

“A. I could tell by looking on the chart. Every one of us has a chart for our patients—what we did for them, and I can tell my handwriting. The 1st of January, 1943, was the first day I took care of her here (referring to chart).

“Q. From that time until March 8, 1943, can you estimate what part of the time you attended

(Deposition of Mrs. Gladys Payne.)

Mrs. Zane? In other words, what part of your six days each week was she under your care?

"A. Well, I would probably have her one day during the week for her bath and morning care; but during the day, why, any time her—if she wanted a bedpan or anything, we would answer it.

"Q. As I understand it, she was in the group of patients you cared for probably one day each week?

"A. Yes.

"Q. In addition, you sometimes served her as floor nurse when she rang her bell?

"A. Yes, that is right.

"Q. Are you acquainted with Mr. William Cameron, Mrs. Payne?

"A. That is the man, the Adjuster that came to see her? [363]

"Q. Yes. Do you know who he is when you see him?

"A. No, I wouldn't remember him.

"Q. Were you present at any time that Mr. Cameron engaged in any conversation with Mrs. Zane there at the hospital?

"A. No, I don't recall any.

"Q. During the course of your acquaintance with Mrs. Zane there between January and March of 1943, what, if any, care or treatment did you render to her right leg?

"A. Well, when her bed was changed, her underneath sheets, it would always take two to do that. One would have to hold the leg and move the pil-

(Deposition of Mrs. Gladys Payne.)

lows—her leg was propped on pillows—while the other one changed the underneath sheets.

“Q. Besides that, what, if any, treatment or care did you give to her right leg or right knee during that period? By that I mean to include any manipulation or anything that would cause you to move her right leg. Will you tell us what, if anything, there was of that kind?

“A. After she was able to sit up, each day—I won’t say each day, either—but at intervals the Doctor would ask us to exercise that leg, bend the knee and move it around when she would be in a chair. [364]

“Q. You say ‘in a chair.’ What chair is that? A wheel chair?

“A. Sometimes she would be in a wheel chair, and sometimes we would just have her in an easy chair we have there. She would sit in that.

“Q. Can you tell us approximately when it was that the Doctor requested this exercise to the right leg, that is, more than just between the 1st of January and the 8th of March? Can you tell us more exactly the date?

“A. No, I couldn’t tell. I suppose it is on the chart here.

“Q. During that time did you ever personally perform any of that exercise to the right leg?

“A. Not while she was in bed, no. We always have the surgeon nurses that do those things.

“Q. Did you ever do so when she was out of bed, in the chair?

(Deposition of Mrs. Gladys Payne.)

“A. I have seen her, yes, when she would be in the chair. We would encourage her to, and help her move that leg.

“Q. Did you personally ever take hold and move the leg?

“A. I can't remember of doing so.

“Q. How many occasions were you present when [365] the right leg of Mrs. Zane was exercised, between January 1st and March 8th, if any?

“A. Well, I was present several times. I couldn't say how many.

“Q. Well, you have said several. Can you tell us some range of numbers? In other words, somewhere between particular figures?

“A. No, I really couldn't. I don't know if we put on the chart each time or not that they were exercised.

“Q. Do I understand you to say there were some times when you were present that that was done? A. Yes.

“Q. What, if anything, did Mrs. Zane state at those times that this right leg was moved and exercised?

“A. Well, it seems as though the pain was more in her knee, in moving the knee,—it was straight for so long.

“Q. Do you mean that is what she said?

“A. That is all I can recall her complaining of.

“Q. Now, what is all you can recall her complaining of?

(Deposition of Mrs. Gladys Payne.)

“A. Of soreness, or pain in her knee when it was moved. [366]

“Q. Do you remember any other statements she made at the times of those exercisings of the right leg?

“A. No, I can't.

“Q. What, if anything, did she say at these times regarding pain in the knee, you have just mentioned?

“A. Well, her knee was—her leg had been straight, you know, just laid out straight for I don't know just how long, but weeks, and her knee was more or less stiff, not bending.

“Q. All right. But the question is, Mrs. Payne, what she stated on those occasions with regard to the knee. What did she say when the knee was exercised?

“A. Well, I can't remember what she said, but I know it was more or less painful to her in the knee when it was bent. When you bend the knee, why, she seemed to have pain in it.

“Q. What do you mean by 'it'?

“A. In the knee.

“Q. What, if any other complaints, did Mrs. Zane make upon those occasions when the leg was exercised?

“A. I can't remember any other pain—of her [367] complaining of any other pain when she was exercised—when her leg was exercised.

“Q. Was Mrs. Zane fitted with any artificial

(Deposition of Mrs. Gladys Payne.)

limb during the time that you knew her there at the hospital?

"A. Yes, she was.

"Q. About when was that?

"A. Just two or three days before she left the hospital.

"Q. What was the nature of the artificial limb that she was fitted with at that time?

"A. Well, it fit up over the stump and came clear up to her hip, braces of some kind, and a strap was around her waist.

"Q. You mean it was an artificial right foot?

"A. Yes.

"Q. To what extent, within your personal knowledge, did Mrs. Zane make use of that artificial member?

"A. Well, when he fitted that to her stump, she stood up with the aid of her crutches.

"Q. Subsequent to that, tell us to what extent you saw Mrs. Zane walk about with that artificial leg, if any?

"A. I didn't see her walk on it without crutches; but she did walk on it with her crutches.

"Q. On how many occasions did you see her do that?

"A. Just this one day. It evidently didn't fit right, and he had to have it readjusted.

"Q. What, if any, statements did Mrs. Zane make at the time you saw her walk with that artificial foot?

(Deposition of Mrs. Gladys Payne.)

“A. She stated that the stump was still tender when she bore her weight on it.

“Q. Did she make any other complaints at that time?

“A. I don't remember any.

“Q. Did you take any part in assisting Mrs. Zane to walk at that time?

“A. No; I was just in the room and saw her. She just took a few steps with the artificial leg.

“Q. That was the only time you saw Mrs. Zane make use of the artificial limb, is that right?

“A. That is the only time.

“Mr. Colegate: That is all.

“Cross Examination

“(By Mr. Carson.)

“Q. Do you remember how often Mr. Cameron used to come to the hospital, Mrs. Payne?

“A. No, I don't know how often. [369]

“Q. Quite often, was it not?

“A. Well, I couldn't say, because I just don't remember.

“Q. You saw him there a number of times, did you not?

“A. I did.

“Q. A number of times at the hospital he would come in and talk to her when he came over?

“A. Yes, he came in and talk to her.

“Q. What day did you say you started to work, Mrs. Payne?

(Deposition of Mrs. Gladys Payne.)

“A. On the 1st of January,—no,—that was the first time I gave her her morning care.

“Q. What date was it?

“A. The 1st of January.

“Q. I notice in here she had morphine. Do the nurses give injections of morphine?

“A. Yes, sir.

“Q. Did you have orders to give her morphine?

“A. Not being a registered nurse, I didn't give the medications.

“Q. But the nurses do give morphine?

“A. Yes, on the doctor's order.

“Q. It shows there was morphine given her along a number of times in January. If the chart recites that morphine was given, it was given, is [371] that correct?

“A. That is right.

“Q. Did she ever complain to you of pain in her back? The chart reads she did complain of pain in her back. Is that right? Do you remember that, Mrs. Payne?

“A. I can't remember

“Q. But if the chart recites it, she complained of it, of course?

“A. Yes.

“Q. Now, she did complain of pain in her knee, is that right?

“A. Yes, she did. When we would bend it, or she would bend her knee, she complained of pain.

“Q. When she would bend the knee, she would complain of pain?

(Deposition of Mrs. Gladys Payne.)

“A. Yes.

“Q. Did it seem to be quite severe?

“A. Well, at first it was more severe than it was later, after she got used to bending it.

“Q. Do you remember of giving her, quite often, alcohol rubs for her back?

“A. She complained of her back.

“Q. Do you remember any occasions you gave her alcohol rubs for her back?

“A. We have routine morning and evening rubs. [371]

“Q. Did she ever say, after she had some of those, it relieved some of the pain in her back?

“A. Yes, it always makes them feel better in the back.

“Q. Did you ever hear any discussion between her and Mr. Cameron that Mr. Cameron thought she would get along all right after she got out of the hospital?

“A. I can't remember any conversation between her and Mr. Cameron.

“Q. Do you remember any conversation, or did you talk to her any about it, after Mr. Cameron came in to see her, if a man from the Artificial Limb Company had come down to fit her, and that Mr. Cameron had said something about that she probably could wear an artificial limb, or she would be all right? Do you remember any conversation with Mrs. Zane about that?

“A. Yes. She told me that she was getting an artificial leg, and she seemed to be enthused over it.

(Deposition of Mrs. Gladys Payne.)

“Q. Did she say anything about Mr. Cameron saying that she would be all right if she got the artificial limb—that is, as to what Mr. Cameron told her?

“Mr. Colegate: That is objected to as being [372] hearsay, what Mrs. Zane may have told this lady.

“Mr. Carson: That may be. You can make your objection.”

Mr. Baker: That was objected to and we object on the ground it assumes a fact not in evidence. It does not make any difference to whom she talked.

Mr. Whitney: She didn't answer.

“Q. But did she ever tell you, Mrs. Payne, that Mr. Cameron had said she would be all right if she got an artificial limb? Do you remember?

“A. I don't remember her saying that.

“Q. You don't remember of her saying that?

“A. No, I don't.

“Q. Do you remember of her saying she had talked it over with Dr. Blackman, anything about the matter of an artificial limb?

“Mr. Colegate: All these questions are objected to as hearsay.

“Mr. Carson: We have an entirely different theory on that. I think it is very competent, under the issues. What was the question?

“(Last question read by the reporter.)

“Q. (Mr. Carson) Do you remember any such conversation, Mrs. Payne?

(Deposition of Mrs. Gladys Payne.)

“A. I can’t remember her saying anything to me. [373]

“Q. When she would talk with you about getting an artificial limb, who did she say she had talked with about getting an artificial limb, do you remember.

“Mr. Colegate: Objected to as assuming something not in evidence

“Mr. Carson: She has testified she did talk with somebody about getting an artificial limb.

“Q. Did she ever tell you who she had talked with about getting an artificial limb, with anyone—Dr. Blackman, or Mr. Cameron—or who did she say she had talked with about getting an artificial limb?

“Mr. Colegate: If she did say that?

“Mr. Carson: If she did have such a conversation.

“Q. You have stated she said something about getting an artificial limb. Do you remember who she said she had talked with?

“A. Well, I don’t remember who she had talked to about it.

“Q. Did you ever hear Mr. Cameron talk with her about settling the case, in her room?

“A. No.

“Q. You never remember of hearing a conversation in the Hospital between Dr. Blackman and Mr. [374] Cameron about how much the doctor bill was going to be, did you?

“A. No, I didn’t.

(Deposition of Mrs. Gladys Payne.)

“Q. Did she ever inquire of you whether Dr. Blackman was a very competent surgeon or not?

“A. No, I don't believe she did.

“Q. Did you give back rubs and alcohol rubs to all the patients in the hospital of an evening?

“A. We do, especially the bed patients.

“Q. Do you remember along about the first of February, or the latter part of January she was given some sulfa drugs? Do you remember that—or do you?

“A. No. I never give the medicine, so I wouldn't know.

“Q. Will you look at this chart? What are these two drugs given right here? That is on February 1st. What is that drug there?

“A. That is Sulfathiazole.

“Q. Do you know what kind of a drug that is? That is one of the sulfa drugs?

“A. Yes, it is.

“Q. What is this down here?

“A. B and C Phosphate.

“Q. What date is that right here: February 5th? [375]

“A. Yes.

“Q. Some sulfa drugs given on that?

“A. No. That is Sulfathiazole ointment to the dressing.

“Mr. Carson: I think that is all.

“Mr. Colegate: Thank you, Mrs. Payne.

“(Stipulated that the signature of the witness in the foregoing deposition named may be waived.)

“State of California,

“County of Riverside—ss.

“I, Charles H. Shaw, a Notary Public in and for said County of Riverside, State of California, do hereby certify that the witnesses in foregoing Depositions named, to-wit: Dr. W. H. Blackman, and Mrs. Gladys Payne, were by me duly sworn to testify the truth, the whole truth and nothing but the truth;

“That said Depositions of said witnesses were taken at the time and place heretofore mentioned in the annexed Stipulation for Taking Depositions, to-wit: on the 21st day of February, 1945, at the office of Dr. W. H. Blackman, 519 Miles Avenue, in the City of Indio, County of Riverside, State of California, before me, Charles H. Shaw; [376]

“That said Depositions of the foregoing witnesses named were taken down in shorthand by me, Charles H. Shaw, and were thereafter transcribed into typewriting; and that by stipulation by and between the attorneys for the respective parties to the foregoing cause, the signatures of the above named witnesses to the foregoing depositions were waived.

“I further certify that I am not attorney or relative of either party to the foregoing cause, or clerk or stenographer of either party, or of their respective counsel, and am in no wise interested in the subject matter of the above entitled cause.

“In Witness Whereof, I have hereunto sub-

scribed my name and affixed my seal of office this 5th day of March, 1945.

“[Seal] CHARLES H. SHAW,
“Notary Public in and for the County of Riverside,
State of California.”

Mr. Baker: We offer this in evidence, or the deposition, rather, of Alpha Marcum.

Mr. Stahl: No objection. It won't be necessary to read that stipulation unless you want to.

Mr. Baker: All right.

(Mr. Baker then assumed the witness stand to [377] read the answers contained in the deposition; Mr. Whitney reading the questions.)

“In the District Court of the United States
For the District of Arizona

“Civ. No. 642

“ZOA H. ZANE and JACK ZANE, her husband,
Plaintiff,

vs.

“PACIFIC GREYHOUND LINES, a corporation,
Defendant.

“Deposition of Alpha Marcum, taken on behalf of defendant, at 428 Bartlett Building, Los Angeles, California, at 10:00 o'clock a. m., February 20, 1945, before P. S. Noon, a Notary Public within and for the County of Los Angeles and State of California, pursuant to the annexed stipulation.

“Appearances of Counsel:

“Bryce P. Gibbs, Esq., for defendant.

“Terrence A. Carson, Esq., for plaintiffs.

“ALPHA MARCUM

“having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed and testified as follows: [378]

“Direct Examination

“By Mr. Gibbs:

“Q. Will you state your full name, please?

“A. Alpha R. Marcum.

“Q. Are you married or single?

“A. Single.

“Q. What is your age, please? A. 55.

“Q. What is your present residence?

“A. San Fernando.

“Q. What is your occupation at the present time?

“A. Registered nurse, working with the War Food Administration.

“Q. On December 10th and 11th, 1942, where did you reside? A. Indio.

“Q. What was your occupation there?

“A. Superintendent of the Coachella Valley Hospital.

“Q. How long had you been employed there prior to that time?

“A. I went there in the fall of 1940.

(Deposition of Alpha Marcum.)

“Q. During all of that time you were superintendent of the hospital? A. I was. [379]

“Q. Do you recall now how many nurses were in the employ of the hospital there in December, 1942?

“A. I do not recall the exact number. There were possibly eight or nine.

“Q. You recall the case, do you not, in which Mrs. Zane was brought into the hospital for attention, when she had been on a bus and was injured near Indio?

“A. I recall a woman coming in, yes.

“Q. You do not know what time she got into the hospital, do you? A. I do not.

“Q. But you remember the occasion?

“A. Of her being brought in, yes.

“Q. Do you know of your own knowledge now the extent of her injuries at the time you first saw her?

“A. Other than the injury to the foot I recall nothing.

“Q. Did you have anything whatsoever to do personally with treating her or arranging for her treatment?

“A. Not other than assigning each day the nurse to take care of her. That was one of my duties, to assign the nurse to take care of Mrs. Zane. [380]

“Q. Do you now remember who you assigned to the case?

(Deposition of Alpha Marcum.)

“A. I do not, because nurses come and go too fast.

“Q. There was a record kept of the nurses working on the case, was there?

“A. The initials would be on the chart.

“Q. Was that chart kept under your direct supervision?

“A. All charts are in hospitals.

“Q. That is, they were kept under your supervision as superintendent of the hospital?

“A. Yes.

“Q. At any time while Mrs. Zane was in the hospital did you examine her, or were you present at any time when any nurse did examine her, or treat her?

“A. Well, frequently I went into the room when she was being given nursing care.

“Q. Did you have occasion at any of those times to observe her right limb?

“A. The right limb? I don't recall there being any occasion for any observation, no.

“Q. Were you present when an amputation of her right foot was performed?

“A. I don't recall whether I was in surgery or not.

“Q. You do not recall whether you were present at any time during the operation?

“A. I do not.

“Q. At any time while you were there in the hospital as superintendent did you yourself personally have any conversation with Mrs. Zane?

(Deposition of Alpha Marcum.)

“A. Not other than to say ‘Good morning; are you comfortable; is your foot all right; do you have the things you need?’

“Q. Did she at any time make any complaint to you about any injury other than the injury below the right knee?

“A. Any injury below the right knee?

“Q. I mean the injury which made it necessary to amputate the foot.

“Mr. Carson: She probably did not understand your question, Mr. Gibbs.

“Mr. Gibbs: Q. Well, it was necessary to amputate her right foot, was it not?

“A. Yes. I remember the woman was in very severe shock.

“Q. Do you know whether she was conscious or unconscious when she first came to the hospital?

“A. I do not. I am sure the operation was necessary or it would not have been done. [382]

“Q. Do you know how long after she reached the hospital the amputation was performed?

“A. I do not recall.

“Q. Do you know who were present in the room when the amputation was performed?

“A. I do not, because I don’t recall being in surgery at that time at all.

“Q. Do you know who the surgeon was who took care of Mrs. Zane’s case?

“A. It would be Doctor Blackman or Doctor O’Connell. I am inclined to think it was Doctor Blackman.

(Deposition of Alpha Marcum.)

“Q. After the operation had been performed did you ever see any of the nurses trying to assist Mrs. Zane in walking?

“A. Yes, when she was convalescing she was given crutches and the nurses assisted her, they assisted her in getting up in the chair and in trying to teach her to use crutches.

“Q. Did Mrs. Zane at any time make any complaint about any injury to her right hip?

“A. Not that I recall at all.

“Q. What was her condition when she left the hospital.

“A. She was in very good condition, excepting that the woman was very, very clumsy, and was very [383] timid about trying to help herself in any way, and I had cautioned the nurses, I remember, about helping her, to see that she did not fall, because she was so clumsy with the use of her crutches.

“Q. Do you know of her ever having fallen at the hospital while she was there?

“A. I feel sure she never fell while she was there.

“Q. Did you meet her husband while she was in the hospital?

“A. Yes, ever so many times.

“Q. Did he have anything to say about her injuries to you personally?

“A. As I remember it he was a very disagreeable individual. He was always putting in long

(Deposition of Alpha Marcum.)

distance calls and talking for indefinite periods, and he sounded to me as if he was a very——

“Mr. Carson: I believe that answer is irrelevant.

“Mr. Gibbs: Read it.

“(The answer was read by the reporter.)

“Mr. Gibbs: That all may go out as being incompetent and immaterial.

“Q. I mean did he ever make any statement to you or in your presence concerning his wife’s injuries while she was at the hospital? [384]

“A. No, not that I recall.

“Q. Did you meet Mr. Cameron while Mrs. Zane was confined in the hospital? A. Yes.

“Q. Did you see him there on many occasions in connection with this case?

“A. Mr. Cameron was there several times, I am sure, about this case, or concerning it.

“Q. Were you present at any time when negotiations for a settlement took place?

“A. I went into the room with Mr. Cameron when he presented the two checks to Mr. and Mrs. Zane.

“Q. Did you witness the settlement?

“A. Yes.

“Mr. Gibbs: Counsel, will you look at this, please (indicating)?

“Mr. Carson: Is that the original or a copy?

“Mr. Gibbs: That is a copy of the original. I haven’t the original here. I just want to identify

(Deposition of Alpha Marcum.)

her signature on what purports to be a copy of the release.

“Mr. Carson: Are you going to offer this in evidence?

“Mr. Gibbs: I want to offer this as a copy of the original. I haven’t the original. That will [385] be produced at the trial.

“Mr. Carson: Will you vow that this is a true and correct copy?

“Mr. Gibbs: Well, I had nothing to do with it, of course. I will ask the witness to examine it.

“The Witness: I know that’s my signature.

“Mr. Carson: That is your signature?

“The Witness: Yes, that’s my signature, absolutely.

“Mr. Gibbs: Q. You were present when Mr. and Mrs. Zane signed this?

“A. Yes.

“Q. That is what you were there for, was it, for the purpose of witnessing their signatures?

“A. To witness their signatures, yes.

“Q. This is a release which purports to state on the face of it that it covers a settlement in the sum of \$15,967.00; is that correct? A. Yes.

“Q. Is that a carbon copy of the instrument which you signed at that time?

“A. As far as I can recall, yes. It looks to me to be the very same thing.

“Mr. Gibbs: With the understanding that the original will be produced at the time of trial, I [386]

(Deposition of Alpha Marcum.)

will offer this now, and ask that it be attached to the deposition.

“Mr. Carson: Yes. If that is a true and correct copy of the original, and that is her signature, all right. It is subject, of course, to producing the original at the trial.

“Mr. Gibbs: Yes.

“Mr. Carson: That is your signature, and that is a true and correct copy of the original?

“The Witness: Absolutely. It’s my signature, anyway.

“Mr. Gibbs: Will you mark this, please?

“(The instrument in question is annexed hereto, marked Defendant’s Exhibit A by the Notary Public.)

“Mr. Gibbs: Q. You saw Mr. and Mrs. Zane sign that?

“A. Yes, I am quite sure I did.

“Q. They signed it in your presence?

“A. It seems to me they did, yes. I took a bottle of ink in there for them to sign it.

“Q. As I understand it, at no time did you make any examination personally of Mrs. Zane’s injuries? A. No.

“Q. You never gave her any treatment of any kind while she was at the hospital? [387]

“A. No.

“Q. That was given by some assistant of yours?

“A. It was. A superintendent doesn’t do those things.

(Deposition of Alpha Marcum.)

“Q. And you would not know what nurses did that unless you had the chart; is that correct?

“A. Yes, that’s right.

“Q. Did Mrs. Zane at any time while she was at the hospital, before she left there, make any complaint to you about any injury to her right hip?

“A. Not that I recall.

“Mr. Gibbs: You may cross-examine.

“Cross-Examination

“By Mr. Carson:

“Q. I believe Mrs. Zane went in the hospital on December 11th, and that she was injured on the 10th.

“Mr. Gibbs: The night of the 10th, and was taken to the hospital on the 11th, I believe. I don’t remember the hour she got there; I have no record of it myself.

“Mr. Carson: Q. At any rate, the amputation took place when, if you remember?

“A. I don’t recall.

“Q. Do you remember the approximate time she [388] left the hospital?

“A. No. Patients came and went too fast for me to remember.

“Q. There were quite a few other patients brought in along with her from that bus accident, were there not?

“A. I think there were.

“Q. Probably four or five?

“A. I am not sure of the number.

(Deposition of Alpha Marcum.)

“Q. Doctor Blackman handled considerable business for the Greyhound, did he not, that is, patients that came into the hospital there?

“A. He did.

“Q. Does he own an interest in the hospital there at Indio?

“Mr. Gibbs: If she knows of her own knowledge.

“Mr. Carson: Q. Yes, if you know of your own knowledge.

“A. Doctor Blackman, Doctor O’Connell and Dr. Pawley own the hospital.

“Q. You say you saw the claim agent over there, and was he around the hospital considerably?

“A. Only when it was necessary.

“Q. He was over there probably on an average once or twice a week while Mrs. Zane was in the hospital; is that right? [389]

“A. I don’t recall Mr. Cameron being there that often, although he always took care of the needs of the patients very nicely, I will say that.

“Q. I believe the records show, Miss Marcum, that this lady was in the hospital almost three months. Isn’t it just a little unusual for a case of an amputated leg to stay in the hospital that long?

“A. It all depends upon the condition of that leg.

“Q. The condition of the leg?

“A. Absolutely—or the foot.

(Deposition of Alpha Marcum.)

“Q. Do you know whether or not the right hip was X-rayed?

“A. I don't recall. I do not recall there being any need for it being X-rayed, or there ever being any complaint about the right hip in any way.

“Q. You were superintendent of nurses?

“A. I was superintendent of the hospital.

“Q. Superintendent of the hospital?

“A. Yes.

“Q. You say you had about eight nurses there?

“A. Yes.

“Q. What hours did those nurses work?

“A. Eight hour shifts; 7:00 to 3:00, 3:00 to 11:00, 11:00 to 7:00. [390]

“Q. Do you remember shortly after the accident some of the patients were taken to a hospital in Los Angeles?

“Mr. Gibbs: Objected to as immaterial.

“Mr. Carson: Well, do you know anything about an occasion when it was suggested by Mrs. Zane's husband that the case was rather serious and he thought she ought to be taken to a hospital in Los Angeles; do you remember anything about that?

“A. I don't recall anything to that effect.

“Q. I think you stated a while ago, Miss Marcum, that Mrs. Zane was in rather a serious condition of trauma or shock when she was brought to the hospital?

“A. Yes.

“Q. Will you just describe her condition then?

(Deposition of Alpha Marcum.)

“A. As I recall it she was very much in shock, as anyone would be from an injury like that.

“Q. The right leg had been mangled, had it not?

“A. The foot, as I recall, because it was the foot that was amputated.

“Q. Do you remember something about her being fitted with an artificial limb after she got her settlement?

“A. I have a hazy remembrance of the representative of some surgical appliance company coming [391] down there to see her.

“Q. She was in the hospital approximately three weeks after the case was settled, and do you remember that a few days or a week after the settlement was made there was some gentleman who fitted her for an artificial limb?

“A. As I say, I have a hazy remembrance of some representative coming to see her concerning an artificial limb, but when or who it was I have no recollection.

“Q. Do you remember any conversations at the hospital between Doctor Blackman and Mr. Cameron, the claim agent for the Greyhound?

“A. I do not.

“Q. You do not?

“A. No.

“Mr. Carson: I think that is all.

“Mr. Gibbs: That is all.

“(It was stipulated and agreed by and between counsel that signature by the witness to the fore-

(Deposition of Alpha Marcum.)

going deposition is waived, and that it shall possess the same force and effect as though read and signed in the presence of the Notary Public before whom it was taken.) [392]

“State of California,

“County of Los Angeles—ss.

“I, P. S. Noon, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

“That prior to being examined the witness whose signature is affixed to the foregoing deposition Alpha Marcus, was by me sworn to testify the truth, the whole truth and nothing but the truth;

“That the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction;

“That when reduced to typewriting it was read by or to the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and was thereupon signed by the said witness in my presence.

“I further certify that I am not interested in the event of the action.

“Witness my hand and seal this 23rd day of February, 1945.

“P. S. NOON

“Notary Public in and for the County of Los Angeles, State of California.” [393]

Mr. Baker: The exhibit here attached, which she identified, is the same, if you want to look at it, gentlemen. It is very apparent that it is a carbon copy of the original that was put in evidence.

(This document was received in evidence as Defendant's Exhibit AG.)

Mr. Baker: Will the Court grant a recess at this time, please? I would appreciate it if you will.

The Court: We will suspend until 10 in the morning. Keep in mind the Court's admonition.

Thereupon a recess was taken at 4:40 o'clock P. M. of the same day. [394]

Ten o'clock A. M. May 22, 1945, all parties as heretofore noted by the Clerk's Record being present, the trial resumed as follows:

The Court: You may proceed.

Mr. Baker: I'd like to recall Mrs. Zane for four or five questions which I omitted to ask, your Honor please.

The Court: Very well.

ZOA H. ZANE

resumed the witness stand and testified further as follows:

Re-cross Examination

Mr. Baker:

Q. Mrs. Zane, when we were interrogating you with reference to the checks contained in Defend-

(Testimony of Zoa H. Zane.)

ant's Exhibit AD, we were hunting for a check to Milligan & Company and could not find it at the time. I hand that to you. Is that your check?

A. Yes.

Q. And this Milligan & Company are the people that prepared or made your artificial limb in Los Angeles, California?

A. Yes, sir.

Q. And this check is in full payment of the amount of that bill, is that correct?

A. Yes, sir. [395]

Q. And it is dated March 5th, 1943?

A. Yes.

Q. And that check is upon your Indio bank?

A. Yes, sir.

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was received as Defendant's Exhibit AH in evidence.)

(Thereupon Defendant's Exhibit AH was read to the jury by Mr. Baker.)

Mr. Baker: You testified about some services performed for you after you arrived at Phoenix by the Arizona Brace Shop? A. Yes, sir.

Q. That is a concern that also deals in artificial limbs, isn't that true, here in Phoenix?

A. Yes, sir.

Q. I hand you a check dated June 16th, 1943, payable to the Arizona Brace Shop. Is that in

(Testimony of Zoa H. Zane.)

payment for some services in connection with that artificial limb?

A. Yes, it was for a leather shrinker. That is a device put on the end of my leg to shrink it down so I could wear an artificial leg.

Q. That is the same limb that was furnished you by the Milligan Company in Los Angeles? [396]

A. Yes, the one they furnished me that fitted me up too soon. My stump was not prepared.

Mr. Baker: We offer this in evidence.

Mr. Stahl: No objection.

(The document was marked as Defendant's Exhibit AI in evidence and read to the jury by Mr. Baker.)

Mr. Baker: I hand you another check, payable to the Arizona Brace Shop, Mrs. Zane, and ask you is that for some services in connection with that same artificial limb?

A. Yes, sir. After they had got my stump shrunk, why, they started rebuilding a shaft of the leg and they were to charge me seventy-five or fifty dollars, I don't remember now how much, and the \$25.00 was deposited on the work that they were to do on it.

Mr. Baker: We offer this in evidence.

Mr. Carson: All right.

(This document was marked as Defendant's Exhibit AJ in evidence and read to the jury by Mr. Baker.)

Mr. Baker: I hand you another check to the

(Testimony of Zoa H. Zane.)

Arizona Brace Shop. Was that also for services in connection with this same artificial limb?

A. Yes; but I don't remember what. [397]

Q. You don't remember what it was?

A. No.

Q. Might that have been something in connection with the crutches you have or the artificial limb?

A. That may have been.

Mr. Baker: We offer this in evidence.

Mr. Carson: No objection.

(This document was received as Defendant's Exhibit AK in evidence and read to the jury by Mr. Baker.)

Mr. Baker: Now I believe, Mrs. Zane, that—I am not sure, it might have been in the deposition, so if I mis-state it you can correct me—I believe you testified that you had some conversation with this Arizona Brace Shop here in Phoenix after you arrived in Phoenix concerning your leg. Is that true or not, or am I mistaken?

A. That I had had some conversation with the Arizona Brace Shop?

Q. Yes. A. After receiving my leg?

Q. Yes, here in Phoenix.

A. Yes, after trying to use it for a week or so, why, I went to the Brace Shop here to see if they could teach me how to use it. [398]

Q. And what did they do in that respect?

A. Well, they said at the time they thought it was too short, and Mr. Aunger looked at my stump

(Testimony of Zoa H. Zane.)

and said I had been fitted up too soon, that my stump was not even healed up, let alone shrunk.

Q. What did you do in that respect, concerning the artificial limb then?

A. Well, they told me not use it any more until my stump had been shrunken and healed. He said it was doing more harm than good.

Q. So their theory was you had been fitted too soon in Los Angeles; your stump had not been properly shrunk, is that correct? A. Yes.

Q. Did they make any reference to your hip?

A. No. At that time, why, they just looked at my stump and told me I was not ready to wear a limb yet.

Q. As I understand it, Mrs. Zane, you at no time before the date this suit was filed, which was December 9th, 1944, notified the Pacific Greyhound Lines that there was any difficulty in your hip?

A. No.

Q. And you made no demand upon them, is that correct? [399] A. That is right.

Q. Not until the suit was filed, is that correct?

A. Well, I don't know. I turned it over to my attorney.

Q. As far as you are concerned, you made no demand? A. No.

Mr. Baker: I think that is all.

Re-direct Examination

Mr. Stahl:

Q. Now, Mrs. Zane, this conversation you relate

(Testimony of Zoa H. Zane.)

you had with the Arizona Brace Shop regarding the stump, then what did you do after that; did you have any other talks with them after that?

A. Yes, from time to time.

Q. I mean, did you go back to them again?

A. Yes, from time to time I would go back and they would examine the stump to see if it was ready to be fitted for an artificial limb.

Q. Then what?

A. Well, the first day I was there Mr. Auger gave me a wide elastic band. It was to wrap around my leg to take the swelling out, and then later, after it had done its work, why, then he fitted me [400] up with this leather, which is a leather shrinker, and after wearing it for a while, why, they started to work on my limb, the artificial limb.

Q. Then did you wear it?

A. Well, I dragged it around for a while, but I couldn't support any weight on it.

Q. Did you go back to them?

A. Yes. The last time I was down there, Mr. Auger suggested maybe there was something the matter with my hip and suggested that I have X-rays made.

Q. That is what led you to have the X-rays taken?

A. Yes.

Mr. Stahl: That is all.

Mr. Baker: No further questions.

(The witness was excused.)

Mr. Baker: The defendant rests.

Mr. Stahl: Except for the mortality table, Mr. Baker has agreed we can put that in. I have shown it to him and he says it is all right. I guess, without re-opening, I could read it. The American Experience Table on mortality shows that the life expectancy of a person 23 years of age is 40.17 years.

Mr. Baker: The defendant desires to make a [401] motion in the absence of the jury, may it please the Court. I understand the plaintiffs have rested?

Mr. Stahl: Yes.

The Court: All right. (Addressing the jury) You may retire from the courtroom, gentlemen. I will excuse you until 11 o'clock, gentlemen. We have to settle these instructions. Keep in mind the Court's admonition.

Thereupon the jury retired from the courtroom.

Mr. Baker: If the Court please, both sides having rested and the evidence has been closed, therefore, at the close of the testimony the defendant moves the Court to instruct a verdict in favor of the defendant, on the grounds and for the reasons that the evidence adduced at the trial of this cause does not show or prove a cause of action in favor of the plaintiff, in that: First, it affirmatively appears from the testimony that a due, proper and legal release has been executed by the plaintiffs; second, that such release covers not only known, but unknown injuries, and all suspected and unsus-

pected injuries resulting from the bus accident in question and also waives all benefits of Section 1542 of the Civil Code of California; three, that there is no evidence [402] showing any intentional fraud upon the part of the defendant; four, that there is no evidence showing any constructive fraud on the part of the defendant; five, that there is no evidence showing mutual mistake sufficient to void the release; six, that if any such constructive or intentional fraud does appear, that the release covers the same and the plaintiffs cannot recover in view of the terms of the release; seven, that it affirmatively appears from the evidence that the plaintiffs have not offered a restitution of the benefits received by them from the defendant on account of the release; eight, that in the complaint the plaintiffs allege an excuse for not offering restitution to the defendant on the ground that the plaintiffs have expended their monies in the treatment and the cure of her troubles caused by a fractured hip; nine, the evidence shows conclusively that that is not true, that the money has been expended for other purposes and, therefore, there has been no proper offer of restitution; ten, it further appears from the evidence that the plaintiffs were notified of the fractured hip and the alleged falsity of the representations made to them at the Indio Hospital, if any such representations were made, at least by August or during [403] August, 1943; eleven, that although having such knowledge the plaintiffs did not offer to rescind the release; did not tender the amount of the con-

sideration received by them from the defendant yet remaining in their hands, and did not notify the defendant of the fractured hip, nor of the discovery of the falsity of the representations; twelve, that the failure of the plaintiffs to so notify the defendant or to offer to rescind the release has prejudiced the defendant.

That is the extent of my motion unless you want to listen to some more arguments.

(Thereupon oral arguments were made to the Court.)

The Court: Call in the jury.

(Thereupon the jury returned to the courtroom and resumed their respective places in the jury box.)

The Court: I am sorry, gentlemen. I should have excused you until 2. We have been a little longer than I thought we would be, so you may go now until 2 o'clock.

(Thereupon the jury retired from the courtroom.)

The Court: Your motion will be denied.

(Thereupon a recess was taken at 11:20 o'clock [404] A. M. of the same day.)

Two-o'clock P. M. of the same day, all parties as heretofore noted by the Clerk's Record being present, with the jury, the trial resumed as follows:

The Court: You may proceed, gentlemen.

(Thereupon closing arguments were presented to the jury by counsel for both sides, after which the Court instructed the jury, as follows.) [405]

THE COURT'S CHARGE TO THE JURY

The Court: It now becomes the Court's duty, gentlemen, to instruct as to the law that applies to this case.

The plaintiffs, by their action, seek to recover damages for injuries received by Zoa H. Zane while riding as a passenger on one of the defendant's busses. They claim that the injuries arose and were caused by the negligent operation of its bus.

You are instructed that a carrier of passengers is required to exercise the highest degree of care in their transportation, and is responsible for injuries received by them while in the course of transportation which might have been avoided by the exercise of such care, and if you find that while the plaintiff, Zoa H. Zane, was being carried as a passenger by the defendant, Pacific Greyhound Lines, the bus upon which she was a passenger collided with a truck traveling ahead of said bus and in the same direction and that said plaintiff sustained injuries as a result of such collision, then a presumption of negligence arises which throws upon the defendant, Pacific Greyhound Lines, the burden of showing that the injuries were sustained without any negligence on its part, and in [406] the absence of such evidence your finding should be that the accident and injuries to the plaintiff, Zoa H. Zane, were caused by the negligence of the defendant.

You are instructed, that if you find from a preponderance of the evidence that, prior to the execution of the release introduced in evidence, an agent

or agents of the defendant represented to the plaintiff, Zoa H. Zane, that her only injury was the injury to her right foot and lower right leg, which necessitated the amputation of said leg below the knee, and that she had not sustained any other injuries, and that she would be able to use an artificial limb and avoid the use of crutches, and if you further find from a preponderance of the evidence that said representations were not true and that plaintiffs believed the same and relied thereon, and that had it not been for such representations and such belief and reliance, the plaintiffs would not have executed said release, then, although said agent or agents did not know that said representations were not true at the time they were made, and although there was no fraud or wrongful intent on the part of said agent or agents to deceive or defraud said plaintiff, the plaintiffs are not bound by said [407] release so far as the injuries to the right femur or thigh bone of said plaintiff, Zoa H. Zane, and the results and consequences thereof, are concerned, and the plaintiffs can recover for such injuries and the results and consequences thereof if you find from a preponderance of the evidence that the negligence of the defendant was the proximate cause of said injuries.

You are instructed that if you find from the evidence that, prior to the execution of the release introduced in evidence, Dr. Blackman represented to the plaintiff, Zoa H. Zane, that the only injuries she had sustained as a result of the accident were the injuries to her right lower leg and foot that

necessitated the amputation, and that said plaintiff could use an artificial limb, and if you further find from the evidence that said representations were not true and that said plaintiff, as a result of said accident, sustained a fracture of her right femur or thigh bone resulting in a non-union of said bone with the hip bone, and that said plaintiff could not and cannot use an artificial limb, and if you further find that said representations were believed and relied upon by the plaintiffs, and if you further find that the claim agent of said [408] defendant knew of, approved and ratified said representations, and that the defendant approved the settlement and accepted the benefits thereof, then the defendant is stopped from claiming that said representations cannot be attributed to it, and said release is not a bar to this action.

You are instructed that if you find from a preponderance of the evidence that the claim agent of the defendant, prior to the signing by the plaintiffs of the release relied on by the defendant, had left with the plaintiff, Zoa H. Zane, a form of release in which the consideration was stated to be \$14,500.00 and in which the accident was stated to have resulted in the loss of said plaintiff's right foot and lower leg, and if you further find from the evidence that said plaintiff was led by said claim agent to believe that the release which she was signing and which she signed was the form of release that said claim agent had left with said plaintiff and that as a result said plaintiff signed said release introduced in evidence, then said release is no defense in this

suit and your verdict should be for the plaintiffs for such damages as you may find the plaintiffs have sustained by reason of and as a result of the injury to the right femur or thigh [409] bone of the plaintiff, Zoa H. Zane, if you further find from a preponderance of the evidence that the accident was caused by the negligence of the defendant and that such negligence was the proximate cause of said injury.

You are instructed that it is for you to decide whether representations were made by the defendant or its agents. In determining this I instruct you that direct evidence is not indispensable to prove agency, but that this may be shown by other facts and circumstances from which the agency may be properly inferred, such as the relations of the parties to each other and their conduct in reference to the subject matter involved in the case.

You are instructed that if you find for the plaintiffs, then it is your duty to fix the amount of damages as shown by the evidence relative thereto. In fixing the amount of such damages, if any, you may take into consideration the age of the plaintiff, Zoa H. Zane, the extent of the injuries, if any, to the right femur or thigh bone of said plaintiff, and the results and consequences thereof, her physical and mental pain, suffering and inconvenience already endured, if any, and that she may endure in the future as a result of such [410] injury, if any, and the character of such injury, whether temporary or permanent; you may also consider any reasonable

expense incurred in the treatment of said injury and her inability, if any, to work and earn money, and to perform her duties and to engage in gainful pursuits, and any impairment of her physical powers and any limitations placed upon her in the enjoyment of her physical faculties by reason of said injury, and allow such sum as will under the evidence compensate the plaintiffs for said injury, not, however, exceeding the sum of \$51,565, the amount asked for by the plaintiffs in their complaint.

You are instructed that the plaintiffs in their complaint, among other things, charge that the written release in evidence was executed by the plaintiffs by reason of certain intentional false and fraudulent representations or concealment by the defendant or its agents. You are further instructed that the following elements are necessary to constitute intentional fraud on the part of any person:

One: A representation; two: its falsity; three: its materiality; four: the speaker's knowledge of its falsity or ignorance of its truth; five: his intent that it should be acted upon by [411] the person and in the manner reasonably contemplated; six: the hearer's ignorance of its falsity; seven: his reliance on its truth; eight: his right to rely thereon; nine: his consequent and proximate injury.

It is necessary, of course, that plaintiffs should prove all of these essentials, as to any claim of intentional fraud. The nature and extent of the proof required depends to a great deal upon the relation-

ships existing between defendant and plaintiffs. If they were dealing at arm's length, a greater degree of proof is required than if a confidential relationship existed between them.

You are instructed that fraud on the part of any person is never presumed. It must be established by clear, convincing and satisfactory evidence. You can not find fraud to exist on a mere suspicion as to the possibility thereof.

You are instructed that the plaintiffs in this case contend that they were induced to execute the release in question by reason of false representations made to them that the plaintiff, Zoa Zane, had suffered no fractures from the bus accident except the fractures for which she was treated at the Indio Hospital. They further contend that such representations were false in [412] that the plaintiff, Zoa Zane, in said bus accident had sustained a fracture of the femur of her right hip in addition to the fractures treated at the hospital.

You are further instructed that the burden is upon the plaintiffs to prove to your satisfaction by a preponderance of the evidence, that Zoa Zane did suffer a fracture of the femur of her right hip in said bus accident, and that such fracture existed at the time she was in the Indio Hospital, before you can give consideration to any other features of the case concerning the liability of the defendant, if any.

You are not permitted to presume that representations made to the plaintiffs, or either of them,

were false merely because there is a possibility that the fractured femur could have been caused by the bus accident.

You are instructed that the plaintiffs claim and assert in their complaint that in making a settlement and signing the release in question they relied upon certain statements made to them by one Dr. Blackman, whom they allege to be an agent of the defendant company. Defendant in its answer denies that said Dr. Blackman was or is an agent of the defendant. [413]

Therefore, before you can give any consideration whatever to the alleged representations on the part of Dr. Blackman the plaintiffs must first prove to your satisfaction by a preponderance of the evidence that said Dr. Blackman was at the time that he made such representations, an agent of the defendant company, authorized to make the representations.

You are instructed that while agency does not need to be proved by direct testimony, and may be established from circumstances such as relationship of parties to each other and to the subject matter and their acts and conduct, but the acts and conduct of the principal alone and not of the agent must be relied upon to show agency. Agency can not be proved by declarations of the agent alone or of a third person, other than the principal.

Therefore in this case in determining whether or not Dr. Blackman was an agent of the defendant company, you can not take into consideration the

declarations of Dr. Blackman himself alone or of third persons. You must be governed solely by the acts, conduct and declarations of the defendant company or of its proven, authorized agents. If the only proof of agency are the declarations [414] of Dr. Blackman himself then you must find that no agency existed.

You are instructed that although the defendant company may use and have used Dr. Blackman to treat its own employees for illness and accidents not occurring in the course of employment, under a hospital and medical benefit plan established by the company and for which deductions are made from the pay roll of the employees; that does not necessarily constitute Dr. Blackman an agent of the company insofar as injured passengers and third persons are concerned. That agency, if any, would be restricted to employees entitled to the medical and hospital benefits provided by the company.

You are instructed that there is no legal duty upon a carrier of passengers to furnish medical and hospital services to a passenger injured in an accident, other than first aid. If liability on the part of the carrier for the accident and injuries to the passengers is established, then the carrier becomes liable in damages to the passenger, which includes medical and hospital expenses incurred by him; but that does not place the duty upon the carrier to furnish a physician, medical and hospital assistance to the [415] passenger except such as are necessary for first aid in the first instance.

The only duty that devolves upon the carrier on the injury of a passenger is the duty invoked by the humanitarian doctrine—that is, the duty to use every effort to get the injured passenger to a physician or a hospital for treatment. That fact that a carrier complies with such humanitarian doctrine and takes the injured passenger to a physician for treatment does not in itself constitute such physician an agent of the carrier.

You are instructed that the fact that the defendant company as a part of the settlement with the plaintiffs for their claim for injuries to the plaintiff Zoa Zane, paid the doctor's and hospital bills incurred by Zoa Zane, does not alone constitute the doctor and hospital, or either of them, an agent of the defendant.

You have heard the term “negligence” used in the instructions, gentlemen. Negligence has a very broad, general meaning, but the law gives it a specific meaning and that is the definition I am about to give you, and when I use the term “negligence” in the instructions, unless specifically qualified in some other manner, I shall mean **this particular definition**: [416]

Negligence is the failure to do what a reasonably prudent person would ordinarily have done under the circumstances of the situation, or the doing of what such a person under the existing conditions would not have done. That is the law and it is also a common-sense definition. Negligence is either the doing of what an ordinarily prudent man would

not have done, or the failure to do what an ordinarily prudent man would have done under the circumstances existing at the particular time. You will, therefore, see that we can not say in advance that any particular thing is or is not negligent. It depends upon the circumstances of the particular case, and then what would an ordinarily prudent person under those particular circumstances as they existed have done, or what would he have failed to do.

Now, negligence, in order to be set up on the part of the plaintiffs as ground for recovery must be what we call the proximate cause of the injury or the damage. The question then arises, what is proximate cause? The proximate cause of an accident is the cause without which the accident would not have happened. [417]

You are the sole judges of the facts in this case and of the credibility of the witnesses. You have the responsibility of deciding upon the credibility of all the witnesses and the weight that shall be given to their testimony, whether these witnesses be professional men or laymen. You may believe the testimony of one witness against several, or vice versa, as in your best judgment you decide. The court gives you no advice as to how you shall determine the facts of the case. The law, of course, you must take from the court as correctly expressed in these instructions. In civil actions the preponderance of the credible evidence governs. You are

not required, as in a criminal case, to find facts beyond a reasonable doubt.

In every civil action, as in this case, the burden is upon the plaintiffs to prove their case by a preponderance of the evidence. Preponderance of the evidence means the greater weight of the credible evidence as you find it to be. If, in your final estimate, the evidence is equally balanced as between the plaintiffs and the defendant, then the defendant is entitled to your verdict. On the other hand, any preponderance of the evidence in the plaintiffs' favor, however slight in [418] preponderance, requires a verdict against the defendant.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives, or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of it as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the parties; the manner in which he might be affected by the verdict, and the extent to which he

is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should [419] distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling of bias, you would reach a contrary conclusion.

After you return to your jury room you will select one of your number to act as foreman and you will proceed with your deliberations. After you have agreed upon a verdict you will have it signed by your foreman and return into open court. Any verdict agreed upon must be a unanimous verdict of the jury.

Two forms of verdict have been prepared for your guidance, and, one, omitting the title of the court and cause, reads:

“We, the jury duly impaneled and sworn in the above entitled action, upon our oaths, do find for the defendant, Pacific Greyhound Lines, a corporation.”

If your verdict is for the defendant, you will sign that one. [420]

The other is:

“We, the jury duly impaneled and sworn in the above entitled action, upon our oaths, do find for the plaintiffs and assess their damages at blank dollars.”

If your verdict is for the plaintiff, you will insert whatever amount your findings may be and that, of course, must be signed by your foreman.

Anything further, gentlemen?

Mr. Baker: I have no further instructions.

Mr. Carson: No, none, your Honor.

The Court: Any exceptions to the instructions?

Mr. Stahl: Yes, we except to the refusal of the Court to give plaintiffs' requested instruction number 4, on the ground that we believe the instruction correctly states the law applicable to the facts of the case.

Mr. Carson: An exception.

Mr. Stahl: The plaintiffs object and except to the giving of the defendant's requested instruction number 3, as modified, for the reason that it is a general instruction and that it is immaterial whether the representation claimed to have been by the agent of the defendant were intentional or not, and the instruction would lead the jury to believe that it will be necessary for [421] the plaintiffs, in order to establish these misrepresentations as to the extent of the plaintiff's injuries, to prove all of the elements set forth in the instructions,

which is not the law, especially as to the 4th element mention in the instructions, and to the 5th element. We claim that the instruction, if given at all, should be limited to the claim of the plaintiffs as to the substitution of the forms of release.

Mr. Carson: The plaintiffs except to defendant's instruction number 4 on the ground that the instruction sets forth the rule of evidence in equity and it is not related to the case at bar.

Mr. Stahl: The plaintiffs object and except the giving of the defendant's requested instruction number 8——

Mr. Baker: (Interrupting) As modified.

Mr. Stahl: As modified, on the ground that the instruction makes any declarations of the agent inadmissible in evidence to prove agency, even though there is other evidence proving agency, and the law is that the declarations of an agent to prove agency are admissible in connection with or in corroboration of other evidence.

The plaintiffs object and except to the giving of defendant's instruction number 11, on the ground that there is a legal duty upon a carrier to take care of passengers when such passengers are injured by the negligence of a carrier.

Mr. Stahl: That is all.

Mr. Baker: The defendant excepts to the giving of plaintiff's requested instruction number 2, upon the ground that the same does not properly state the law applicable to the facts of this case, in that it fails to give the proper effect to the release admitted and proven in the case, and upon the further

ground that the same contains conflicting instructions intended to confuse the jury, and upon the further ground that the plaintiffs in this case seek recovery on several different theories. This instruction makes no distinction between the theories, and among other things provides that the plaintiffs are entitled to recovery for a single injury without giving credit for the injuries paid for, and also on the ground that the instruction assumes that the release in evidence in this case is not set aside in toto.

The defendant excepts to the court giving plaintiffs' requested instruction number 5, and in such respect we refer to the exceptions made to plaintiffs' requested instruction number 2, giving by the court, and reiterate such exceptions to this [423] instruction number 5, on the further ground that said instruction does not state all the elements of fraud necessary to constitute a cause of action by the plaintiffs in this case, and may we at this time also add that last exception to our exception to instruction number 2 requested by the plaintiffs.

This requested instruction number 5 does not properly state the law applicable to the facts in this case, and does not take into consideration the fact that a release was executed releasing them from all known and unknown injuries.

The defendant excepts to the court giving plaintiffs' requested instruction number 6, upon the grounds previously assigned, and upon the further ground that in this instruction the plaintiffs are relying upon intentional fraud, and there is no proof

in the case of such intentional fraud. This instruction does not properly state the law applicable to the facts in this case, and we refer to and reiterate all the exceptions made to the previous instructions.

The defendant excepts to instruction number 10 requested by the plaintiffs upon the ground that such instruction does not properly state the law applicable to the facts of this case in that [424] respect, and I further call attention to court that the instruction in question is one giving to the jury a measure of damages applicable to this case. In such instructions the court does not provide for credit to the defendant for the monies already paid the plaintiffs and, furthermore, the court assumes that the plaintiffs are entitled to recover for injuries to a hip as separated from other injuries, and does not take into consideration the fact that the plaintiffs seek to set aside the entire release by the allegations in their complaint.

The defendant excepts to the refusal of the court to give defendant's instruction number 1, on the grounds stated in defendant's motions for an instructed verdict and a reference is hereby made to such motions on such grounds.

The defendant excepts to the refusal of the court to give defendant's requested instruction number 2, on the ground that the same properly states the law applicable to the facts of this case, and in refusing such instructions the court refuses to give credence and effectiveness to a proper and legal release executed by the plaintiffs.

As to defendant's requested instruction number 6, the defendant excepts to the action of [425] the court in refusing to give such instruction, in that it properly states the law applicable to the facts of this case, and upon the further ground that the court is submitting this case to the jury without a proper instruction as to the burden of proof required to be carried by the plaintiffs in establishing the falsity of an alleged false representation.

As to defendant's requested instruction number 9, the defendant excepts to the refusal of the court to give such instruction, on the ground that the same properly states the law applicable to the facts of this case, and in doing so the court refuses to properly instruct the jury as to the obligation of the plaintiffs to prove the authority of an agent of a principal in order to hold such principal liable for the declarations or representations of such agent.

As to instruction number 13 requested by the defendant, the defendant excepts to the refusal of the court to give such instruction, on the ground that the same properly states the law applicable to the facts of this case, and the refusal of such instruction prejudices the defendant. The instruction properly states the law with reference to the failure of the plaintiffs to give notice of [426] rescission of the release, or notice of discovery of fraud in the execution of the release within a reasonable time and by such actions the court denies the defendant the benefit of an equitable remedy and imposes upon the defendant an undue hardship, in that it appears affirmatively from the evidence the defendant was

prejudiced by the failure of the plaintiffs to give notice of discovery of fraud and notice of rescission of the release.

As to defendant's requested instruction number 14, the defendant excepts to the action of the court in refusing to give such instruction, in that the same properly states the law applicable to the facts of this case, and by such refusal the court substantially instructs the jury that the plaintiff are entitled to recover any amount of damages without credit for the amount previously paid the plaintiffs, and without deduction from the amount of the verdict which they are entitled to return on account of the amount paid by the defendant to the plaintiffs.

The Court: The record may show the exceptions.

Thereupon the bailiff was duly sworn and the jury retired to deliberate upon its verdict at 4:35 o'clock P. M. of the same day. [427]

I Hereby Certify that the proceedings and evidence given upon the trial of this cause is contained fully and accurately in the shorthand notes taken by me of said trial, and that the foregoing 427 typewritten pages contain a full, true and accurate transcript of the same.

LOUIS L. BILLAR,

Official Shorthand Reporter.

[Endorsed]: Filed Oct. 18, 1945. [428]

[Endorsed]: No. 11194. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Greyhound Lines, a corporation, Appellant, vs. Zoa H. Zane and Jack Zane, her husband, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed November 26, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11194

PACIFIC GREYHOUND LINES, a Corporation,
Appellant,
vs.

ZOA H. ZANE and JACK ZANE, her husband,
Appellees.

CONCISE STATEMENT BY APPELLANT OF
POINTS UPON WHICH IT INTENDS TO
RELY UPON APPEAL, WITH DESIGNA-
TION OF PARTS OF TRANSCRIPT OF
RECORD DEEMED NECESSARY FOR
PRINTING

Now Comes Pacific Greyhound Lines, a corpo-
ration, and in accordance with Sub-division 6 of

Rule 19 of the Rules of this Court, hereby states that upon its appeal it intends to rely upon the following points:

1. That the trial court erred in denying defendant's motion for instructed verdict in favor of the defendant made at the close of plaintiff's evidence, for the reason that plaintiffs' evidence was not sufficient to sustain or establish a cause of action or legal claim against the defendant.

2. The court erred in denying defendant's motion for instructed verdict made at the close of all the evidence, for the reason that the evidence was not sufficient to sustain or establish a cause of action or legal claim against the defendant.

3. That the evidence is insufficient to support the verdict or judgment, and the verdict and judgment are not justified by the evidence and are contrary to evidence and the law.

4. That the court erred in denying defendant's motion for judgment for defendant notwithstanding the verdict and for judgment in accordance with motion for directed verdict, and defendant's alternative motion for new trial, for the reasons set forth in said motions, which motions appear upon pages 70 to 73, inclusive, of the Clerk's Transcript of Record.

5. The court erred in refusing to render and enter judgment for the defendant in accordance with motion for directed verdict made at the close of all the

evidence for the same reasons assigned in paragraph 4 hereof.

6. The court erred in giving plaintiffs' requested instructions numbers 2, 5, 6 and 10, upon the grounds that said instructions do not properly state the law applicable to the facts of the case and are not in accordance with the evidence and there is conflict and contradiction in said instructions misleading to the jury and also unnecessary repetition accentuating plaintiffs' theory of the case.

7. The court erred in refusing defendant's requested instructions numbers 1, 2, 6, 9, 13 and 14, upon the grounds that said instructions, and each of them, properly state the law applicable to the facts of the case, and the defendant was entitled to have them given to the jury, and the refusing of the same resulted in the case being submitted to the jury without proper instructions on defendant's theory of the case.

8. The court erred in admitting evidence offered by plaintiffs of conversations with, and acts and declarations by persons not proved to be agents or representatives of the defendant, or authorized to act for or in behalf of defendant, and said evidence was hearsay.

9. The court erred in admitting, over the objections of the defendant, opinion testimony based upon hypothetical questions not proper in form, not properly stating all of the evidence introduced in the case

pertinent to the matter in question, and improperly stating facts which were not in evidence in the case.

10. The court erred in giving contradictory and conflicting instructions to the jury, which misled and confused the jury.

11. The court erred in charging the jury in that there was harmful repetition of many instructions in favor of the plaintiffs, and thereby the court unduly accentuated plaintiffs' theory of the case.

12. That the damages awarded plaintiffs in the verdict of the jury are excessive and appear to have been given under the influence of passion or prejudice.

Pursuant to the aforesaid rule, the appellant hereby designates for printing the following parts and portions of the Transcript of Record filed with this Court by the Clerk of the United States District Court for the District of Arizona, to-wit:

I.

1. Attorneys of Record.
2. Complaint.
3. Answer.
4. Minute Entries (Minute Entries prior to trial on pages 33-34 not deemed necessary to be printed).
5. Instructions requested by Plaintiffs.
6. Instructions requested by Defendant.
7. Verdict.

8. Judgment.

9. Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial (Memorandum of Points and Authorities attached to the foregoing motions, said memorandum appearing upon pages 74-80 are not to be printed.)

10. Minute Entries of Clerk from June 4th to October 18th, 1945.

11. Notice of Appeal.

12. Supersedeas and Cost Bond.

13. Designation of Record and Proceedings to be Contained in Record on Appeal.

14. Stipulation for Dimunition of Record.

15. Order to Send Up Original Exhibits.

16. Clerk's Certificate to Transcript of Record.

II.

The Reporter's Transcript of Evidence in two volumes should be printed in its entirety.

III.

The following exhibits in evidence should be printed or incorporated in the printed record by means of photostatic copies:

1. Plaintiffs' Exhibits numbers 1 and 2.

2. Defendant's Exhibits, A, B, C, D, E, K, L, M, N, P, S, T, U, V, W, X, Y, Z, AB, AC.

3. The following parts and portions of Defendant's Exhibit AD, to-wit:

All the monthly bank statements of the head office of the First National Bank of Arizona, Phoenix, Arizona, showing the status of the account of Zoa Zane. Said statements are upon yellow paper and are 23 in number, and the first one is for the month of March, 1943, and the last one is for the month of April, 1945.

Appellant does not request or require the printing or incorporation in the printed record of the cancelled checks contained in said defendant's Exhibit AD.

Dated at Phoenix, Arizona, this 24th day of November, 1945.

BAKER & WHITNEY.

By ALEXANDER B. BAKER,
Attorneys for Appellant.

Copy Received this 24th day of November, 1945.

TERRENCE CARSON.
STAHL & MURPHY.

By FLOYD M. STAHL,
Attorneys for Appellees.

[Endorsed]: Filed November 26, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF TRANSCRIPT
OF THE RECORD DEEMED NECESSARY
FOR PRINTING BY APPELLEES

Comes Now the Appellees above named, Zoa H. Zane and Jack Zane, her husband, and hereby designate for the printing the following parts and portions of the Transcript of the Record filed with this Court by the Clerk of the United States District Court for the District of Arizona, to-wit:

Plaintiffs' Exhibits 5, 6 and 12, also this designation.

Dated at Phoenix, Arizona, this 30th day of November, 1945.

TERRENCE A. CARSON.
STAHL & MURPHY.

By FLOYD M. STAHL,
Attorneys for Appellees.

Copy received this 30th day of November, 1945.

BAKER & WHITNEY.
By BAKER & WHITNEY,
Attorneys for Appellant.

[Endorsed]: Filed December 3, 1945, Paul P. O'Brien, Clerk.

No. 11194

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

PACIFIC GREYHOUND LINES, a corporation,
Appellant,

vs.

ZOA H. ZANE and JACK ZANE, her husband,
Appellees.

Upon Appeal from the District Court of the United States
for the District of Arizona

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday,
August 26, 1946

Before: Mathews, Healy and Bone, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Alexander B. Baker, counsel for appellant, and by Messrs. Floyd Stahl and Terrence A. Carson, counsel for appellees, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday,
February 28, 1947

Before: Mathews, Healy and Bone, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
JUDGMENT.

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,194

Feb. 28, 1947

PACIFIC GREYHOUND LINES, a corporation,
Appellant,
vs.

ZOA H. ZANE and JACK ZANE, her husband,
Appellees.

Upon Appeal from the District Court of the
United States for the District of Arizona

Before: Mathews, Healy and Bone, Circuit Judges.
Bone, Circuit Judge.

OPINION

This is an appeal from a final judgment of the district court. Appellant's motion for judgment n.o.v. and for a directed verdict and alternative motion for a new trial were denied.

Appellant's answer was a general denial which put appellees on proof of all of the allegations of their complaint. It further asserted that the release referred to below was a complete bar to appellees' action.

Zoa H. Zane (then 23 years of age and in good health), a citizen of Arizona, was injured near

Indio, California, while riding as a pay passenger on a bus owned and operated by appellant, a citizen of California. She was immediately taken to a nearby hospital operated by one Dr. Blackman where it was found necessary to immediately amputate her right leg at a point below the knee. The necessity for the operation and the liability of appellant for the injury are not issues on this appeal. There was evidence from which the jury could have found: That while Zoa H. Zane was in the hospital, one Cameron, who was a claim agent of appellant, called upon her to discuss the matter of a settlement of her claim for personal injuries; that Blackman and Cameron falsely stated and represented to her that her sole and only injury was the loss of her lower right leg and that she had suffered no other or further injury; that Cameron advised her that Blackman was appellant's doctor, that he was a good and capable doctor with a high degree of medical skill, and that she could depend and safely rely upon whatever Blackman might tell her in regard to her injuries and condition; that both of these men acted in this matter as agents of appellant, and that as a result of these false representations, appellees were led to sign and deliver a certain "release" to appellant; that while all of said statements and representations of Blackman and Cameron were false, said statements resulted in entirely deceiving her as to the nature and extent of her injuries; that at and during this period she did not have or retain the services of a doctor or a lawyer because she relied implicitly upon what

was told her by Blackman and Cameron respecting her injuries; that some time after her discharge from the hospital, she discovered that in the said bus accident she had also suffered a severe fracture of her right femur, which fact Blackman and Cameron failed to disclose to her and wilfully and deliberately hid from her by said false and misleading representations.

That about three weeks prior to the actual signing of said release by appellees, Cameron left with Zoa H. Zane, for her inspection at the hospital, a printed form of release¹ to be signed if and when a settlement was agreed upon; that the printed

1

“RELEASE IN FULL

IPGL-2251-B

“Received of Pacific Greyhound Lines the sum of Fifteen Thousand nine hundred sixty-seven and 00/100 Dollars (\$15,967.00) in consideration of which sum we hereby release and discharge Pacific Greyhound Lines of and from any and all claims and demands which we now have or may hereafter have, on account of or arising out of an accident which occurred on or about the 11 day of December, 1942, at Point on U. S. Highway #99, near Indio, California, resulting in personal injury and property damage.

“It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.

“It is further understood and agreed that the payment of said sum is not, and is not to be construed as, an admission on the part of said payors

form was in letters and figures exactly as indicated in footnote 1, save and except that the printed form so left with Zoa H. Zane contained certain words which had been added thereto and written into the release form in ink, that is, interpolated into the text of the printed form; that these added words were "Loss of right foot and lower leg"; that this qualifying phrase was written into the printed form

of any liability whatsoever in consequence of said accident.

"Dated at Indio, Calif., this 19 day of February, 1943.

"ZOA ZANE (L.S.)

JACK ZANE (L.S.)

M. CAMERON,

Witness.

ALPHA R. MARCUM,

Witness.

"This release should not be signed unless read by or read to the person signing same.

"State of

County ofss.

"On the day of, 19....., before me personally appeared, to be known and known to me to be the same person mentioned and described in and who executed the above instrument and acknowledged to me that executed the same.

Notary Public.

"Section 1542 of the Civil Code referred to in the above release reads as follows:

"'1542. Certain claims not affected by general release. A general release does not extend to claims which the creditors does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor.'

"Form 7100SC 15M 1041 (S&C)"

of release at a place immediately after the printed words "resulting in", which latter words appear near the end of the first paragraph of the printed form; that the understanding of appellees was that this limiting and qualifying phrase had been inserted in the printed form of release to indicate the exact nature and extent of the injury for which appellees were to be compensated in the pending settlement; that appellees would not have later signed the release in the form appearing in footnote 1 had they known at the time of signing it that Zoa H. Zane had also suffered the additional femur injury in the bus accident.

That immediately before the release was signed by appellees, Cameron came to the hospital room of Zoa H. Zane and, ostensibly for the purpose of examining it, requested permission to take from the room the form of release which she had been holding; that he returned in a few minutes, bringing with him what she then thought was the same form of release she had just surrendered to him; that while out of the room, Cameron deliberately substituted another form of release for the one he had taken from her room, the substituted release being the same printed form of release, but one not containing the interpolated qualifying phrase "Loss of right foot and lower leg"; that this substitution of forms of release was not made known to Zoa H. Zane, who thereupon joined with her husband in signing the release, fully believing that it was the form containing the said qualifying phrase; that this deception caused them to sign a release which

did not contain the said phrase which they desired for their protection and believed to be in the release; that procuring appellees to thus sign the release was a willful, actual and deliberate fraud on appellees; and that appellees would not have signed the release had they known it did not contain the ink interlineation of the phrase mentioned.

Below and here, the position of appellees was and is that the facts were as outlined above; that as a result thereof, the release they signed was not a bar to their action, due to the fraud practiced on them, which nullified the release and destroyed its purported effect; and that they may recover in this action for the added and undisclosed femur injury.

From the above summary and from an inspection of appellees' complaint, certain matters are made abundantly clear. Appellees based their right of recovery and their right to avoid the purported effect of the said release upon a showing at the trial of actual fraud practiced by appellant's agents. In sweeping terms their complaint charged that "all of the statements and representations" made to them by the said two agents of appellant "were wholly false and untrue, and either were made by said Doctor and said claim agent, who then and there were the agents of the defendant, knowing the same to be false and untrue, or were made recklessly and without regard as to their truth or falsity, and with a full means of knowledge of their falsity"; [emphasis supplied] that Dr. Blackman,

on many occasions, "Falsely stated and represented." The same specific charge of actual fraud is made against Cameron.

There can be no doubt that both pleadings and proof of appellees made the existence or non-existence of actual and intentional fraud the paramount and decisive issue in this case. It is also clear that appellees relied on the charges and proof of actual fraud to void the release.

This view of appellees' theory of the case finds support in the instructions given by the court. In these instructions it is obvious that the court was of the view that the right of appellees to avoid the purported effect of the release and to have a verdict at the hands of the jury rested, in the last analysis, upon convincing proof of acts on the part of agents of appellant amounting to actual fraud upon appellees. This is indicated by the following instructions to the jury:

"You are instructed that the plaintiffs in their complaint, among other things, charge that the written release in evidence was executed by the plaintiffs by reason of certain intentional false and fraudulent representations or concealment by the defendant or its agents. You are further instructed that the following elements are necessary to constitute intentional fraud on the part of any person:

"One: A representation; two: its falsity; three: its materiality; four: the speaker's knowledge of its falsity or ignorance of its

truth; five: his intent that it should be acted upon by the person and in the manner reasonably contemplated; six: the hearer's ignorance of its falsity; seven: his reliance on its truth; eight: his right to rely thereon; nine: his consequent and proximate injury.

"It is necessary, of course, that plaintiffs should prove all of these essentials, as to any claim of intentional fraud. The nature and extent of the proof required depends to a great deal upon the relationships existing between defendant and plaintiffs. If they were dealing at arm's length, a greater degree of proof is required than if a confidential relationship existed between them.

"You are instructed that fraud on the part of any person is never presumed. It must be established by clear, convincing and satisfactory evidence. You can not find fraud to exist on a mere suspicion as to the possibility thereof.

"You are instructed that the plaintiffs in this case contend that they were induced to execute the release in question by reason of false representations made to them that the plaintiff, Zoa Zane, had suffered no fractures from the bus accident except the fractures for which she was treated at the Indio Hospital. They further contend that such representations were false in that the plaintiff, Zoa Zane, in said bus accident had sustained a fracture of the femur of her right hip in addition to the fractures treated at the hospital.

“You are instructed that if you find from a preponderance of the evidence that the claim agent of the defendant, prior to the signing by the plaintiffs of the release relied on by the defendant, had left with the plaintiff, Zoa H. Zane, a form of release in which the consideration was stated to be \$14,500.00 and in which the accident was stated to have resulted in the loss of said plaintiff’s right foot and lower leg, and if you further find from the evidence that said plaintiff was led by said claim agent to believe that the release which she was signing and which she signed was the form of release that said claim agent had left with said plaintiff and that as a result said plaintiff signed said release introduced in evidence, then said release is no defense in this suit and your verdict should be for the plaintiffs for such damages as you may find the plaintiffs have sustained by reason of and as a result of the injury to the right femur or thigh bone of the plaintiff, Zoa H. Zane, if you further find from a preponderance of the evidence that the accident was caused by the negligence of the defendant and that such negligence was the proximate cause of said injury.” [Emphasis supplied.]

Instructions of the foregoing character leave no doubt that the trial court was clearly of the view that appellees had undertaken to rest their case upon the theory and proof that actual and inten-

tional fraud had been practiced upon them which finally resulted in the execution of the release relied upon by appellant.

We now consider appellant's contentions regarding the fraud issue. Appellant assigns error on the giving of an instruction (No. 2) requested by appellees, which reads as follows:

“You are instructed, gentlemen of the jury, that if you find from a preponderance of the evidence that, prior to the execution of the release introduced in evidence, an agent or agents of the defendant represented to the plaintiff, Zoa H. Zane, that her only injury was the injury to her right foot and lower right leg, which necessitated the amputation of said leg below the knee, and that she had not sustained any other injuries, and that she would be able to use an artificial limb and avoid the use of crutches, and if you further find from a preponderance of the evidence that said representations were not true and that plaintiffs believed the same and relied thereon, and that had it not been for such representations and such belief and reliance, the plaintiffs would not have executed said release, then, although said agent or agents did not know that said representations were not true at the time they were made, and although there was no fraud or wrongful intent on the part of said agent or agents to deceive or defraud said plaintiff, the plaintiffs

are not bound by said release so far as the injuries to the right femur or thigh bone of said plaintiff, Zoa H. Zane, and the results and consequences thereof, are concerned, and the plaintiffs can recover for such injuries and the results and consequences thereof if you find from a preponderance of the evidence that the negligence of the defendant was the proximate cause of said injuries.” [emphasis supplied]

It seems clear to us that in giving this (plaintiffs' requested) Instruction No. 2, the court completely parted company with the trial theory of appellees under which they rested their right of recovery on a showing of actual fraud. This instruction dealt with constructive fraud. It clearly authorized the jury to find for appellees if constructive fraud was shown by the evidence to have characterized acts of appellant's agents.

This aspect of the case becomes decisive in light of the rule announced by the California decisions, where the right of recovery is predicated upon a showing of constructive fraud (to avoid a release). The party injured by the constructive fraud must rescind the release contract and offer restitution of the consideration. On the other hand, *Meyer v. Haas*, 126 Cal. 560, 58 Pac. 1042, holds that the rule of rescission and restitution does not apply where a party is tricked or deceived into signing a contract different by its terms and objects from the contract he had made and which he understands he is executing. Under such a state of facts, the fraud-feasor

is not entitled to the return of the money paid as compensation for an acknowledged injury. See also *Backus v. Sessions*, 17 Cal. (2nd) 380, 110 Pac. (2nd) 51; *Tyner v. Axt*, 298 Pac. 537, 113 Cal. App. 408; *O'Meara v. Haiden*, 204 Cal. 354, 268 Pac. 334.

This instruction on constructive fraud is therefore erroneous in that nothing is said therein respecting the necessity for rescission of the release contract and restitution of the consideration paid thereunder. See *Taylor v. Hopper*, 207 Cal. 102, 276 Pac. 990; *Garcia v. Cal. Trucking Co.*, 183 Cal. 767, 192 Pac. 708. Cf. *O'Meara v. Haiden*, 204 Cal. 354, 268 Pac. 334. It may be that the cases do not make wholly clear exactly at what point of time rescission and restitution must be effected, but the California rule would seem to indicate that both must be shown by the evidence before a right of recovery exists. By the instruction here complained of, the jury was told that it might return a general verdict for appellee without any proof or showing that they had offered to rescind the contract of settlement and/or to make restitution of the money paid to them under the release settlement.

This is more clearly demonstrated by the fact that on trial appellees admitted that they were unable to tender or repay the consideration which they received from appellant in the settlement, because they had spent most of the money. Their complaint also alleges substantially the same fact.

The court may have given the instruction on constructive fraud on the theory that the provisions of section 1542 of the Civil Code of California (see

text of section in footnote 1) applied to the state of facts revealed by the evidence. Appellees requested an instruction which applied the rule of section 1542, but withdrew it.

In the absence of actual fraud, the express waiver of all rights under this section (1542) was valid. See *Berry v. Struble*, 20 Cal. App. (2nd) 299, 66 Pac. (2nd) 746. Cf. *Hudgins v. Standard Oil Co.*, 136 Cal. App. 44, 28 Pac. (2nd) 433.²

On this state of the record, it is clear that it was the province of the jury to determine from all of the evidence whether appellees had been tricked by the fraudulent acts and representations of appellant's agents into believing that they were signing a release which, by its terms, covered only the loss of a right foot and lower right leg.³ Under Cali-

²For a comparison of additional cases dealing with the type of release employed in the instant case see: *O'Meara v. Haiden*, 268 Pac. 334 (1928); *Gambrel v. Duensing*, 16 Pac. (2nd) 284 (1932); *Backus v. Sessions*, 110 Pac. (2nd) 51 (1941). See also comment on section 1542 in *Rued v. Cooper*, 119 Cal. 463, 469.

³In *Wilson v. San Francisco-Oakland Terminal Rys.*, 48 Cal. App. Rep. 343, 349, the court held that where a release of a claim for damages for personal injuries is tainted with fraud it should not be sustained, the question of whether or not such taint exists being one to be submitted to and decided by the jury. See also *Jordan v. Guerra*, 144 Pac. (2d) 349. The rule of the *Wilson* case also supports the contentions of appellees that the proof they tendered regarding the agency of Dr. Blackman and Cameron was properly submitted to the jury for determination as to its probability and truth.

fornia decisions, where such a fraud is practiced on the releasor and he is thereby led to execute a release which is different in its terms and objects from the contract he has made and which he understands he is signing, the release contract thus signed becomes absolutely void. This, because the mind of the releasor never consented to any such release. Herein it differs from a release the nature and contents of which the releasor understood correctly, but which he was led to execute by fraud and deception as to something other than the contents of the release contract. In such latter case the contract would not be void, but only voidable.⁴

Some of the California decisions hold that in cases of actual fraud, the release contract should be reformed to speak the understanding of the parties at the time of its execution, and in that form, it stands as the agreement of the parties as to the known injuries.⁵

As indicated above, we confront a posture of the case, where under Instruction No. 2, the jury was at liberty to find a general verdict for appellees

⁴*Backus v. Sessions*, 110 Pac. (2nd) 51 (1941); *Meyer v. Haas*, 126 Cal. 560, 58 Pac. 1042; *Tyner v. Axt*, 298 Pac. 537 (rehearing denied); Cf. *O'Meara v. Haiden*, 268 Pac. 334 (1928); *Mairo v. Yellow Cab Co.*, 281 Pac. 66 (rehearing denied); *Raynale v. Yellow Cab Co.*, 300 Pac. 991.

⁵See *Backus v. Sessions*, 110 Pac. (2nd) 51 (1941); *Raynale v. Yellow Cab Co.*, 300 Pac. 991; *Tyner v. Axt*, 298 Pac. 537 (rehearing denied); *Jordan v. Guerra*, 144 Pac. (2nd) 349; *O'Meara v. Haiden*, 268 Pac. 334 (1928); Cf. *Romano v. Seibt*, 272 Pac. 1065.

which could have rested on testimony which fell short of establishing the existence of actual fraud on the part of agents of appellant, but did prove, or tend to prove, the existence of constructive fraud in the various transactions shown by the evidence. Nothing in the record enables us to ascertain upon which theory of fraud the jury may have rested its general verdict. The presence of these conflicting instructions provides no assurance that the error did not materially affect the jury's verdict. At best, it was left to take its choice between two inconsistent theories of recovery.⁶

The verdict under the evidence might stand if it could be clearly shown (as below indicated) that it rested upon satisfactory proof of actual fraud, but for the reasons indicated above, it must fail if rested on proof of constructive fraud. Had there been a special or fact-verdict, or if the general verdict had been coupled with answers to fact-interrogatories clearly indicating that the general verdict was rested on proof of actual fraud, we would know to a certainty that giving the instruction on construc-

⁶We do not overlook the argument that the test of the correctness of instructions is whether, upon the whole charge, the jury will gather the proper rules to be applied in arriving at a correct decision. The harmless error doctrine is so eminently sensible that it should be freely used. But its use in connection with jury trials where, as here, the jury brings in merely a general verdict, often presents a troublesome problem.

tive fraud was harmless error.⁷ As it is, we are unable to determine and therefore cannot say that it affirmatively appears from the whole record that giving these inconsistent instructions was harmless error. See *Bollenbach v. United States*, 326 U. S. 607; *Bihn v. United States*, 328 U. S. . . ., June 10, 1946; *Kotteakos v. United States*, 328 U. S. . . ., June 10, 1946; *Ah Fook Chang v. United States*, 9 Cir, 91 F. 2d 805; *Lynch v. Oregon Lumber Co.*, 9 Cir, 108 F. 2d 283.

Appellant has assigned as error the giving of certain instructions here considered. One of these advised the jury that appellant was estopped from claiming that the representations of Dr. Blackman cannot be attributed to it, and that the release was not a bar to the action, if the jury found: (a) that the statements and representations of Dr. Blackman were not true, (b) were relied on by appellees, (c) that Cameron, the claim agent knew of, approved and ratified said representations, (d) that appellant approved the settlement and accepted the benefits thereof. (Plaintiffs' Requested Instruction No. 5) Appellant cites no cases in support of this contention. As applied here it does not incorrectly state the law.

⁷The Federal Rules of Civil Procedure (Rule 49) were designed to encourage and facilitate the use of the special verdict or, in the alternative, the general verdict accompanied by the jury's answers to interrogatories as to issues of fact. As an appellate court we have no power to direct trial judges to call for fact-verdicts, but a general and unexplained lump verdict does not cover up substantial errors at the trial.

Another instruction (set out above) dealing with the claimed substitution of forms of release, is assailed. It requires no comment at this point in view of our disposition of the case.

Criticism is directed at an instruction dealing with the amount of damages the jury might award, this on the ground that it failed to require the jury to give credit for amounts paid by appellant under the release contract. Appellant's proposed instructions as to rescission and restitution were refused. Our decision disposes of these issues.

The case is remanded with directions to grant a new trial.

[Endorsed]: Opinion. Filed Feb. 28, 1947. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 11194

PACIFIC GREYHOUND LINES,

Appellant,

vs.

ZOA H. ZANE, et al.,

Appellees.

JUDGMENT

Upon appeal from the District Court of the United States for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the District Court of the United

States for the District of Arizona and was duly submitted:

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is reversed, and that this cause be, and hereby is remanded to the said District Court with directions to grant a new trial, with costs in favor of the appellant, and against the appellees.

It is further ordered and adjudged by this Court that the appellant recover against the appellees for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered February 28, 1947.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, April 8, 1947
Before: Mathews, Healy and Bone, Circuit Judges
[Title of Cause.]

ORDER DENYING PETITION
FOR REHEARING

Upon consideration thereof, and by direction of the Court, it is ordered that the petition of appellees, filed April 3, 1947, and within time allowed therefor by rule of court, and valid extension thereof, for a rehearing of above cause be, and hereby is denied.

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four hundred ninety-three (493) pages, numbered from and including 1 to and including 493, to be a full, true and correct copy of the entire record excluding certain original exhibits of the above-entitled case in the Said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 17th day of April, 1947.

[Seal]

PAUL P. O'BRIEN,
Clerk.